# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 134.

[redacted] B. WEBB, C. M. FIELD, JOHN A. KERR, ET AL.,

APPELLANTS,

vs.

[redacted] WEBB, ED. W. WELLS, SEVEN STARS GOLD MINING COMPANY, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED [redacted]

(24,000)

(18,287.)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1901.

No. 434.

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CLINTON B. WISER, C. M. FIELD, JOHN A. KERR, ET AL., APPELLANTS,

*vs.*

JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD MINING COMPANY, ET AL.

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APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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a CLINTON B. WISER, C. M. FIELD, JOHN A. KERR, James A. Ferguson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, Appellants,

*vs.*

JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD Mining Company, Industrial Mining & Guaranty Company, and John Griffin, Receiver, Appellees.

No. 651.

*Transcript on Appeal.*

1 COUNTY OF YAVAPAI, *Territory of Arizona,* } *ss:*

CLINTON B. WISER and C. M. FIELD

*vs.*

JOHN LAWLER, ED. W. WELLS, THE SEVEN STARS GOLD MINING Company, The Industrial Mining & Guaranty Company, and John Griffin.

To the district court of Arizona in and for the fourth district, sitting at Prescott, Yavapai county:

Plaintiffs for their complaint in the above cause show and state to this honorable court that said Clinton B. Wiser, one of the plaintiffs herein, is a citizen of the State of Illinois and resides in the city of Chicago in said State; that said C. M. Field, one of the plaintiffs herein is a citizen of Illinois and resides in the city of Chicago; that the said defendant- John Lawler and Ed. W. Wells are citizens of the Territory of Arizona and reside in said Yavapai county; that the Seven Stars Gold Mining Company was incorporated, organized and exists as a corporation in the State of New Jersey; that the Bank of Arizona is located in the city of Prescott, in said Territory of Arizona; John Griffin is a citizen of New Jersey and resides in the State of New Jersey; that on and prior to May 12th, 1892, said defendant- Lawler and Wells

2 were in possession of a certain group of mines containing gold-bearing quartz, load-s or veins, located in the Eureka mining district in the county of Yavapai and Territory of Arizona and described as the "Hillside," "Seven Stars," "Happy Jack," "Contact No. 1," "Contact No. 2" and "Camp," and the said defendants gave out, claimed and represented that they held title thereto through or under patents issued by the United States; that said defendants Lawler and Wells were also at and prior to the same date in the possession of the following group of mines or mining claims said to carry and contain gold-bearing quartz, load-s or veins, the "Midnight," located January 1st, 1892, "Waterfall" located Jan-

uary 1st, 1892, "Morning Glory," located January 1st, 1892, "Water" located January 1st, 1892, "Hidden Treasure" located January 1st, 1891, "Sucker" located January 4th, 1891, "Side" located June 21st, 1890, "Purple Rose" located August 10th, 1886, "Southern Belle" located March 11th, 1887, "Lucky Cuss" located June 23rd, 1887, "Robert E. Lee" located June 23rd, 1887, "Centipede" and "Good-enough;" said last groupe of mines being upon public lands of the United States locate- and situate in the mining district and county aforesaid, and said Lawler and Wells gave out and represented that the possession of said last group of mines was vested in them by virtue of their rights therein and their claims thereon, as locaters thereof or under proper and sufficient transfer of conveyance from the original locaters thereof; that at and
3 prior to the date aforesaid a large amount of development work had been done upon said mining properties and a large amount of valuable ore had been taken therefrom; that there had been constructed thereon a small steam quartz mill, fully equipped for operation, and that said mining properties had been otherwise developed and supplied with inplements, appliances and supplies for working and further development and said Lawler and Wells gave out and represented that they were the owners thereof with full right and authority to sell and dispose of the same; that on the 12th day of May 1892, said defendants Lawler & Wells and the wife of said Wells sold and transferred to one Charles Cowland of the city of Denver, Colorado, by written instrument duly executed and properly acknowledged before an officer of said county, authorized by the law of said Territory to take and certify to acknowledgments of such instruments, said entire groups of mines and mining properties, load-s and veins above described, together with said stamp mill, its equipment and all other buildings, utensils, horses, wagons, appliances, material, blacksmith's outfit and all other material substances of every kind and nature being upon said mining properties or pertaining or appurtenant thereto, for the sum of $450,000.00 in cash, the payment of which by said Cowland to said Lawler and Wells was duly acknowledged by proper recital upon the face of said instrument of sale and conveyance; that said instrument and deed of transfer further contained the usual covenants against encumbrances with full and sufficient
4 warranty of title, all of which more fully appears by reference to a copy of said deed of conveyance hereto attached and marked "Exhibit A" and made a part of this complaint, with the same force and effect as if here recited in full; that thereafter said Cowland engaged with H. H. Warner, one of the stockholders herein, to vest the title to said mining property and each and all and every part of the same in the Industrial and Mining Guarantee Company, a corporation organized and existing under the laws of the State of New Jersey, in trust for the time being, for the express purpose of enabling said Cowland and Warner to put on foot, incorporate and organize a company to be known as the Seven Stars Gold Mining Company (hereafter called for brevity gold company), to which company when so incorporated and organized the said

mining properties, so conveyed by said Cowland to said Industrial & Mining Guaranty Company, by a further deed of conveyance should be conveyed and vested in said Seven Stars Gold Mining Company; that pursuant to this arrangement and for the purpose of carrying the same into effect, said Cowland did on the 15th day of June 1892, execute and acknowledge his deed of conveyance to said Industrial & Mining Guaranty Company (hereafter for brevity called guaranty company) passing to it the title to said mining properties and each and every part thereof, together with all the improvements and personal property thereon and thereto belonging,

being the same property in its entirety so conveyed
5 to said Cowland by said Lawler & Wells, a copy of which said deed of conveyance is hereto attached, marked "Exhibit B;" that in further consummation of said arrangement the said gold company was, to wit, on August 17th 1893, fully incorporated and organized under and in pursuance of the laws of the State of New Jersey; that on the 10th day of September 1892, at a meeting of the board of directors of the said guaranty company, a resolution was unanimously adopted authorizing and directing the conveyance to the Seven Stars and other mining property enumerated in said resolution to the gold company upon that company showing that it had placed $200,000 for working capital in its treasury and upon said guaranty company receiving from the said gold company $2,800,000 in cash or in stock of the said gold company, which resolution for greater certainty is hereto attached, made a part of this complaint, and marked "Exhibit B;" that in pursuance of said resolution said capital stock, to wit $2,800,000 of the capital stock of the said gold company was duly issued, placed upon the market and offered for sale and a large amount of said stock amounting in the aggregate to a sum much greater than two hundred thousand dollars in face value thereof was sold to plaintiffs and other various parties in the manner following: On or about the 24th day of September 1892, the said Lawler, representing the said Lawler and Wells, was in the city of New York, in the State of

New York, and after the passage of the resolution above
6 referred to by the said guaranty company authorizing the conveyance of said mining property upon the terms and conditions therein stated, and prior to the execution of any deed or contract of conveyance for said property or any part thereof to the said gold company, as is by said resolution provided, the said Lawler, well knowing the then condition of the title to said mines and mining properties, on his own behalf and on behalf of said Wells, assisted and aided by one H. H. Warner, the president of the said gold company, prepared and caused to be issued a prospectus entitled and reciting among other things "Seven Stars Gold Mining Company, incorporated under the laws of the State of New Jersey. Fully paid and non-assessible. No individual liability whatever. Capital $3,000,000. 600,000 shares, $5 each. Of which 200,000 shares, 15 per cent. Guaranteed stock at $5 per share are now offered for public subscription, payable as follows."

Then follows in said subscription the price per share and the con-

ditions and terms of payment. That on the second page of said prospectus it is represented and recited that, "This company is formed to acquire without further expense or liability to subscribers, on October 1st, 1892, as a 'going concern,' and to provide a working capital to further equip and develop the Seven Stars, Hillside and Happy Jack mines, comprising the following patented claims: Seven Stars, Happy Jack, Hillside, Camp, Contact
7 No. 1 and Contact No. 2; also the locations known as the Mesa, Elwood, Midnight, Mescal, Waterfall and Boulder."

Accompanying and as a part of said prospectus there was also prepared a map or plat of said properties and also the town site adjacent thereto, which map was prepared under the direction and supervision of the said Lawler and Wells, upon which the following statement and representation appears: "Map of the group of mines belonging to the Seven Stars Gold Mining Company, Yavapai county, Arizona." There was also at the same time prepared a blank subscription of application for shares of stock in the said gold company, which application or blank subscription accompanied each and every prospectus and was a part thereof, and for greater certainty the said prospectus together with said map and blank subscription or application are hereto attached marked "Exhibit C" and made a part of this complaint with the same force and effect as if here inserted.

Plaintiffs further aver that said prospectus, together with said map and application for shares, were printed in the city of New York and were distributed by the secretary and treasurer of said gold company in the cities of New York, Chicago and other cities throughout the United States; that many hundred copies of said prospectus together with maps and blank applications accompanying the same were so printed and so
8 distributed for the purpose of selling the stock of said gold company; that a large number of said copies and said maps therewith were forwarded to said Lawler and Wells and the banking houses in the city of Prescott, Arizona, and were distributed by said Lawler and Wells to various persons in said city of Prescott and elsewhere in Arizona; that all statements and representations made and contained in said prospectus and in the map and blank application therewith, and especially the representations and recitals therein that said stock was fully paid and non-assessible, that the property was rich and valuable, and that the money was for working capital and to make said company a going concern, and that said mining property was owned by and belonged to said gold company, and that titles to said "Seven Stars," "Hillside," "Happy Jack" and other mines and locations were unquestionably in the said Seven Stars Gold Mining Company, subscribed for 10,674 shares of the capital stock of said gold company and paid therefor to said gold company the sum of five (5) dollars for each and every share that said representations and recitals aforesaid and contained in said prospectus and in said map and blank application aforesaid as to the said gold company being the owner of said mines and mining properties, were corroborated and the truth thereof further evi-

denced by the fact and facts then existing, to wit: that before and at the date of so subscribing, taking and paying for said shares of capital stock as aforesaid the said gold company was in the actual, open, public, notorious and undis-
9 puted possession of said mines and mining properties, and the said gold company so being in possession thereof as aforesaid was investing large sums of money in and about the improvement thereof, and in the further development thereof, and was working said mines and mining properties and receiving the proceeds derived from the ores taken therefrom, with the full knowledge and consent of said Lawler and Wells, and without any protest or objection thereto from them or either of them. That hereafter and herein said possession by said gold company, and its acts and doings thereunder, will be more fully stated. That many other persons citizens of the United States relying solely upon the representations and recitals contained in said prospectus and in and upon said map and said blank application and said possession and use of said mines and mining properties by said gold company as aforesaid subscribed for various shares of the said stock and paid therefor the sum of five (5) dollars per share; that about the same time, to wit, the 27th day of September, 1892, there was issued another printed prospectus for the purpose of distribution in England and Scotland; that this second prospectus was also prepared by the said Lawler while he was in New York as aforesaid or by the said Warner, with the full knowledge and assent of the said Lawler, representing himself and the said Wells, in and by which prospectus it is stated that the "mines owned by the company are situated in the Eureka mining district, Arizona,
10 fifty miles from Prescott on the Arizona Central railway," etc.; that said prospectus, together with the map above referred to and a blank application for stock, in like form as the application accompanying the said American prospectus, were generally circulated in the city of London and other cities in England and also in cities and towns in Scotland; that many persons upon reading said prospectus and wholly relying upon the truth of the statements and representations therein contained—said gold company then being in the possession and working and improving the same as aforesaid—subscribed for large numbers of shares of stock in the said gold company and paid therefor to said company the sum of five (5) dollars per share, which money was paid to the treasurer of said mining company.

Plaintiffs further aver that all the money paid for said stock by the American and English subscribers thereof was received by the treasurer of said gold company, and by said company was disbursed as hereinafter stated; that on or about the 17th day of August, 1892, the time of the organization of the said gold company, as aforesaid, the possession of said mining property, including the mines and locations hereinbefore described, and all the machinery, tools, supplies, improvements, and all personal property of every kind and nature situate thereon, were by said Lawler and Wells turned over to and received by

said gold company, which company by its superintendent commenced the erection of mills for the better equipment
11 of said mines and mining property and for the purpose of working and developing the same and extracting gold and other precious metals from the ore taken therefrom and assorting and shipping the same to the market for sale and disposition; that from said last-mentioned date until on or about the first day of June, 1893, said gold company was in full possession, control and management of the said mines and mining properties; that all supplies therefor were purchased in its name, and all sales of ore were made and the proceeds thereof used and disbursed by it as its own: that debts were contracted with various persons in the name of said gold company, and that during said period attachment suits were commenced against said company in the courts at Prescott, Arizona, and attachment writs levied upon said mining property as the property of the Seven Stars Gold Mining Company, and afterwards such suits were contested, settled and disposed of by and in the name of said company; that during said period there was realized from the sale of preferred stock from American subscribers thereof the sum of $149,686.14, and from the English subscribers thereof $92,500.00, and from the sale of the regular stock of said company $2,018.80, and from the sale of ores taken from said mines during said period while the same were being operated by said Seven Stars Gold Mining Company the sum of $75,607.42, making a total of $319,812.36 received by the said Seven Stars Gold Mining Company as proceeds of the sale of its
12 stock and the operation of said mines; that out of this amount $217,584.55 was paid by said gold company, or by the guaranty company on behalf of the said gold company, to the said Lawler and Wells, as on the purchase price of said property; that there was also paid by the said gold company from said receipts for operating expenses and for the plant, machinery and new equipment purchased and used in and on said property, including salaries of mining engineers and the expenses of conducting the office of the company, the sum of $120,586.90; that there was also expended and disbursed from said sum so received as aforesaid by said gold company for sundry expenses, prospectuses, postage, printing, etc., the sum of $39,579.45; that there was also disbursed and paid from the sum so received to the American subscribers of the stock of said company as dividends thereon the sum of $15,194.20, and to the English subscribers of said stock as dividends upon their holdings the sum of $6,937.50, of all of which transactions, receipts and disbursements as aforesaid the said Lawler and Wells had full knowledge and notice; that said disbursements were made through the Bank of Arizona, of Prescott, Arizona, of which the said Wells was at said time a director; that on or about the first day of October and prior to the sale or disposition of any of the stock of the said gold company as aforesaid, the books which had theretofore been kept by said Lawler and Wells touching the business and conduct of said mines and mining proper-
13 ties were changed and a new set of books opened in the name of the said gold company, in which the receipts and disburse-

ments of said company, as above set forth, were duly kept, entered and recorded, and to which said books and the accounts therein shown the said Lawler and Wells had full access and of which they had full knowledge.

Plaintiffs further aver that on or about the 4th day of May, 1893, said Lawler and Wells subscribed for $50,000.00 of the capital stock of said gold company, which was issued and delivered to them, or to which they became entitled, and that thereafter, to wit, on the 8th day of May, 1893, the said Lawler was duly elected as one of the directors of said gold company; that on said 4th day of May, 1893, said Lawler was also appointed as superintendent of said gold company, and continued to act as the superintendent of the company's property under the direction and control of the board of directors of said company from said last-mentioned date to on or about the 20th day of September 1893.

Plaintiffs further aver that on said last-mentioned date, to wit, on or about the 20th day of September 189- said Lawler and Wells, while said Lawler was so in possession of said gold company, wrongfully and fraudulently assumed and asserted said possession of said mines and mining properties and all the improvements of every kind and nature thereon and the personal property thereto belonging as their possession for
14 and on their own behalf and adverse to said gold company, and from thence to now they have continued in such adverse possession claiming and pretending that they are the owners of said mines and mining properties, and that the said gold company has no right, title or interest therein or thereto, and as a reason for such wrongful and fraudulent acts and doings by and on the part of said Lawler and Wells in the premises they assert, pretend and give out that they had not been paid the full purchase price of said mines and mining properties by said Cowland, although in their deed thereof to said Cowland the full payment of the purchase price thereof is acknowledged by them as grantors, as heretofore shown and averred, and that by reason of such alleged non-payment the said Lawler and Wells were entitled to change said possession from the possession of said gold company to their possession, and thus forever determine the possession and the right of said gold company to possession therein or thereto, and asserted their right so to do under and by virtue of a certain secret agreement made and entered into by said Lawler and Wells with said Cowland, which said secret agreement bears date the 12th day of May, 1892, and appears to have been executed on the same day as the deed from said Lawler and Wells to said Cowland as aforesaid. That said deed or a duplicate execution thereof appears to have been annexed to and made a part
of said secret agreement by words recited in said secret agree-
15 ment, and that the two together were deposited in escrow in the Bank of Arizona at Prescott, Arizona, of which bank said Wells was a director, at, before and after said bank so accepted the same in escrow as aforesaid; that in and by said secret agreement it is provided, among other things, that $450,000 is to be paid by said gold company in installments, the first installment being

$20,000 in cash paid at the date of the execution of such secret agreement, and the last installment of the purchase price being due and payable on November 12th, 1893, all of which will more fully appear by reference to said secret agreement, a copy of which is hereto attached and marked "Exhibit E."

Plaintiffs further aver that said Lawler and Wells lived in the said city of Prescott or in the immediate vicinity of Prescott and near said mines and mining properties during all of said time and times during which said transactions aforesaid occurred, and had full notice and personal knowledge of the possession of said properties by said gold company, and that it was working, developing and improving said properties and was conducting the business thereof as aforesaid, and also had full notice and personal knowledge that said gold company was holding out to the public and to would-be purchasers of its stock that it held full title and right of possession to said mining properties and each and every part thereof under and by virtue of an absolute and unconditional deed of conveyance from said Lawler and Wells to said Cowland and the successive conveyances heretofore shown and as aforesaid, and also had full notice and personal knowledge that said gold company was offering for sale and making sale of its stock to plaintiffs and others as aforesaid, and that said stock would have no other value than the value represented in and by a full and sufficient title to said mines and mining properties, and also had full notice and personal knowledge that said gold company was receiving and using the money derived from the sale and sales of its capital stock to plaintiffs and others in and about the further improvement, development and working of said mines and mining properties as aforesaid as its property and not otherwise, and that it was represented by the prospectus and other advertising matter and representations made by the said gold company that the proceeds derived from the sale and sales of said stock were to be used in and about the improvement, further development and working of said mines and mining properties, and that it was never represented, stated or given out to plaintiffs and others in like estate as stockholders of said gold company either before they became stockholders thereof or at the time they purchased their stock therein that any part of the purchase remained due and unpaid to said Lawler and Wells, or that any part of the proceeds derived from the sale or sales of said stock paid in by plaintiffs and other purchasers of said stock would be used or any portion thereof would be turned over to said Lawler and Wells toward the payment of any unpaid purchase price thereon or any part thereof, and said Lawler and Wells also had full notice and personal knowledge of the possession of said mines and mining properties by the said gold company, and that while in such possession said mines and mining properties were being developed, improved and worked by said gold company and that large sums of money derived from the sale of stock to plaintiffs and others in like estate was being put into and used in and about the conduct of said business and the further development and improvement of said

mines and mining properties by said gold company and in its name, and that the books of account kept of and touching said business and the conduct thereof by said gold company while it was so in possession and was so managing, improving, developing and working said mines and mining properties, were kept in its name, and that while said Lawler was acting as superintendent thereof and while said gold company was in possession thereof as aforesaid the entries of the transaction of said business so conducted in the name of and on behalf of said gold company were made in said books so kept in the name of said gold company under the direction of said Lawler as such superintendent, and he as such superintendent in fact conducted said business in the name and on behalf of said gold company as its superintendent and in like manner as if said Lawler and Wells had no claim whatever in
18 law or in equity in or to said mines and mining properties, or any part thereof, or for any purpose whatever, and that they, said Lawler and Wells, had full notice and personal knowledge of said suits being brought against said gold company and attachments therein being issued and levied upon said mines and mining properties as the property and properties of said gold company, and that the same were being litigated and contested by said gold company as the property and properties of the said gold company in such attachment suits without any protest from said Lawler and Wells with respect thereto, and without any intervention in said attachment suits by them or either of them, or any attempt to intervene, and in and by such intervention to claim said mines and mining properties as their property, or otherwise to assert or claim any right, title or interest therein or thereto, or that the same or any part thereof belonged to them, the said Lawler and Wells, in any form or to any extent, or to assert in any manner that the said mines and mining properties did not belong to said gold company or that the title thereto was not vested in said company; but on the contrary and during all the time and times aforesaid, and during the occurring and happening of all the transactions aforesaid, and each and every of them, said Lawler and Wells stood silently by with the knowledge aforesaid and participated therein and permitted and encouraged the public, including plaintiffs and others in like estate, to give credit
19 to said gold company as the actual *bona fide* owner of said mines and mining properties, and that the said Lawler and Wells at no time during the transactions aforesaid, or any of them, asserted or gave out that they were the owners of said mines and mining properties, or that a full consideration therefor had not been paid to them as recited and acknowledged in the deed of said mines and mining properties from the said Lawler and Wells to said Cowland as aforesaid, and at no time did said Lawler and Wells while acting in the manner and with reference to said *said* transaction and transactions and each and all of them as aforesaid give out or assert any right or rights under and by virtue of said secret agreement, or that they or either of them under and by virtue of said secret agreement had the right at any time or at the time and under the con-

dition and in the manner alleged in said secret agreement, to retake possession of said mines and mining properties adverse to said gold company, and to determine all claim on its part therein and thereto, and to thus render all of the stock of plaintiffs and others in like estate wholly worthless and of no value whatever.

And plaintiffs further aver that in addition to the acts and doings of said Lawler and Wells as aforesaid and their full notice of and personal knowledge touching the transactions aforesaid as the same and each thereof occurred as aforesaid, said Lawler not only subscribed for and took in the aggregate
20 par value the sum of fifty thousand dollars of the stock of said gold company as aforesaid, but did thereby give out and represent and did aid and unite with said gold company to give out and represent to the public, including plaintiffs and others in like estate with plaintiffs, that said gold company was fully entitled to assert full right and title in and to said mines and mining properties, to issue stock thereon and to the full value thereof, and to sell the same to plaintiffs and others in like estate to whom they made sale thereof as aforesaid, all of which acts, doings, silence and acquiescence on the part of said Lawler and Wells estop them in law and in equity, and that they and each of them are now estopped from disputing full title to said mines and mining properties in said gold company, and from disputing its right to have and hold full possession thereof, with full right to operate and conduct the business thereof in the development and working of said mines and mining properties, and in receiving the entire proceeds thereof and using the same for the benefit of its stockholders and *bona fide* creditors, and that they and each of them are now likewise estopped from asserting any title therein or thereto, or the right of possession thereof, or the right to control the same, or to collect against the same, or against the said gold company by suit or in any manner any further purchase-money, and from claiming that any part of the purchase or contract price for said mines and mining properties
21 remains due to said Lawler and Wells, or to either of them, as the sellers thereof, and from in any manner enforcing the same or any part thereof against said mines and mining properties, or any part thereof, or against said gold company, or its stockholders.

Plaintiffs further aver that by reason of said transactions and each of them as aforesaid, and full knowledge of said Lawler and Wells with respect thereto, and as the same occurred as aforesaid, said Lawler and Wells had no right in law or in equity to receive any of the proceeds derived from the sale of said stock of said gold company, and that their receipt and retention thereof will operate to defraud and injure plaintiffs and others in like estate out of the entire amount derived from the proceeds of the sale of stock of said gold company as aforesaid, and the proceeds of the operation of said mining company as aforesaid paid to said Lawler and Wells in the manner and under the circumstances aforesaid as and for the purchase price for a title which they had estopped themselves from asserting as aforesaid, and that said gold company is entitled to re-

cover, have and receive the same from said Lawler and Wells for the benefit and in the interest of plaintiffs and other of its innocent and *bona fide* stockholders as aforesaid.

Plaintiffs further aver that the acts and doings of said Lawler and Wells as aforesaid, and their dispossession of said gold com-
22 pany as aforesaid, and their assertion of title thereto, thereby preventing said gold company from working or operating said mines and mining properties, have been and resulted in great damage to said gold company and to plaintiffs and to other stockholders in like estate, for which plaintiffs aver that said Lawler and Wells are liable and in equity ought to be required to compensate and pay; that the said acts and doings of said Lawler and Wells as aforesaid, and said unlawful and wrongful seizure by them of said mines and mining properties as aforesaid so greatly embarrassed said gold company financially that it became insolvent, and John Griffin of the State of New Jersey was appointed receiver thereof in and by one of the New Jersey courts having competent jurisdiction in the premises, but that said Griffin has not taken possession of any of said mines or mining properties by virtue of his said receivership by reason of the acts and doings of said Lawler and Wells aforesaid, and has been unable so to do.

Plaintiffs further aver that they hold and own in their own right severally shares of stock of said gold company, standing upon the books of said company in their several names, which aggregate in face value — dollars, divided into shares of five dollars each. That plaintiffs bring this suit in their names, but on behalf of all other stockholders of said gold company in like estate or condition
23 with plaintiffs. That before bringing this suit plaintiffs as such stockholders demanded of the executive officers and directors of said gold company that they should direct and cause suit to be brought in the name of said company for the causes aforesaid but they peremptorily refused so to do, alleging as a reason for such refusal the appointment of a receiver for said company as aforesaid. That thereupon plaintiffs made a like demand upon said defendant receiver and he refused to comply with said demand assigning as a reason for such refusal that the right so to do was not vested in him as such receiver by virtue of such appointment, and that in the situation of the company and its receivership said suit should be brought by and prosecuted by the stockholders.

Inasmuch as plaintiffs' remedy in any action at law would be wholly inadequate and incomplete they bring this their action in equity where matters and things of this sort are fully cognizable and relievable, and make parties defendant hereto John Lawler, Ed. W. Wells, The Seven Stars Gold Mining Company, The Industrial Mining and Guaranty Company and —— Griffin, to the end that they and each of them may be required to make their joint or several answers to the matters and things aforesaid to the best of their knowledge, information and belief, as particularly and fully as if said matters and things were again here repeated in the form of interrogatories, but not under oath, the oaths of said defendants, and

each of them to their said answers whether jointly or severally
24 made being hereby expressly waived; and plaintiffs pray that an account be taken herein with said Lawler and Wells under the proper order of this court, and with such specific instructions therein as may accord with the practice in force in this honorable court controlling such procedure in like cases; that by such accounting said Lawler and Wells may be required to show all payments made to them as for or on account of the alleged purchase price due to said Lawler and Wells by said gold company, and that upon the final hearing hereof and by the final decree of this court said Lawler and Wells, and each of them, may be held and adjudged to be estopped in the premises from disputing full and absolute title of said gold company in and to said mines and mining properties, and likewise from claiming, asserting or insisting upon any right, title or interest therein or thereto, or any possessory rights with respect thereto, in any manner or in any degree, and that the full, absolute title to said mines and mining properties and each and every part thereof be adjudged and decreed to be in said Seven Stars Gold Mining Company, and to quiet said title in said company, and to relieve it from all adverse claim of title in the premises; that said Lawler and Wells may be decreed to quit-claim in the usual form of such conveyances, and release unto said Seven Stars Gold Mining Company all their right, title and interest therein and thereto of every kind and nature whatsoever, or to authorize and empower by a proper recital in said
25 final decree the master of this court, or some proper person appointed as special commissioner therefor, to execute said conveyance for and on behalf of said Lawler and Wells, and that said Lawler and Wells be decreed to repay and turn back to said Seven Stars Gold Mining Company all moneys paid by said gold company to said Lawler and Wells out of any proceeds derived from the sale or sales of its stock to plaintiffs and others in like condition, or out of the proceeds derived from the working of said mines and mining properties and the conduct of the business thereof, from the date of said gold mining company's possession thereof as aforesaid, with interest thereon at the rate allowed by law from the dates of such payments, if such payments were severally made; and that this honorable court will determine upon said hearing the amount of damages to said property and the damages suffered by said gold mining company and through it by plaintiffs as its stockholders and others in like estate, by the seizure of said mines and mining properties, and by the disposition thereof of said gold mining company, and upon finding, fixing and assessing said damages to include the same in said final decree, and to adjudge the same against said Lawler and Wells, and decree the payment thereof by said Lawler and Wells, together with the moneys aforesaid, to said gold mining company by a short day to be named in said decree; and that such other, further or different relief may be decreed in the prem-
26 ises as upon final hearing hereof may seem to be to this honorable court just and equitable, and plaintiffs will ever pray, etc.

And that in the meantime and pending this suit plaintiffs further pray that this honorable court may appoint some fit person as receiver herein, with full and sufficient authority aptly recited in his said order of appointment to take and receive from said Lawler and Wells, or from any other person or persons now in possession of said mines and mining property, and each and every part thereof, possession thereof, and to hold the same as such receiver subject to the further order of this court, with sufficient authority to said receiver to operate said mines and mining properties if it shall be shown upon the entry of said order that the working thereof may prevent waste and damage or can be made profitable to the parties to this suit who may be shown upon the final hearing hereof to be entitled thereto, and to hold the proceeds derived from the working of said mines and mining properties subject to the further order of this court; and plaintiffs pray that summons may be issued out of this court and under its seal for service upon said defendants, and each of them, therein requiring them to appear herein upon a day to be named in said summons, and thereafter to do all things and to abide the issues of this suit as this honorable court may order and direct.

JOHNSTON AND SLOAN,
*Attorneys for Plaintiffs.*

G. W. & J. T. KRETZINGER,
*Of Counsel.*

27 EXHIBIT A.

This indenture made the twelfth day of May, 1892, between John Lawler, and Ed. W. Wells, and —— Wells, his wife, of the city of Prescott in the county of Yavapai and Territory of Arizona, parties of the first part, and Charles Cowland of the city of Denver, Arapahoe county, Colorado, party of the second part, witnesseth:

That the said parties of the first part for and in consideration of the sum of four hundred and fifty thousand dollars (450,000.00) to them in hand paid by the said Cowland, party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do bargain, grant, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all and singular, the following-described mining claims, situate, lying and being in the Eureka mining district, in the county of Yavapai and Territory of Arizona, viz:

"Exhibit A".

"The Hillside," "Seven Stars," "Happy Jack," "Contact No. 1," "Contact No. 2," and "Camp."

Each and all of said claims were conveyed by patents from the United States to said John Lawler and one Beverly T. Riggs, and by said Riggs to said parties of the first part.

Also all and singular all the right, title and interest, estate, claim and demand, the possession and right of possession of the
28 parties of the first part, of, in and to the following-described mining claims and mining locations, situate, lying and being in the said Eureka mining district, in said county and Territory.

The said claims are upon the public lands of the United States and are held by the parties of the first part by possession, who, by these presents, convey the right, title and interest they and each of them have in and to the same, namely:

The "Midnight," located January 1st, 1892, a record of which location is made in Book 33, records of mines of said county of Yavapai, at page 232;

The "Waterfall," located January 1st, 1892;

"Morning Glory," located January 1st, 1892;

"Water," located January 1st, 1892;

"Hidden Treasure," located January 1st, 1891;

"Sucker," located January 4th, 1891;

"Side," located June 21, 1890;

"Purple Ross," located August 10, 1886;

"Southern Belle," located March 11, 1887;

"Lucky Cuss," located June 23, 1887;

"Robert E. Lee," located June 23, 1887;

"Centipede," and "Good Enough."

Also that certain five-stamp steam mill, situate upon the said "Side," mining claim and adjacent to said Hillside and "Seven Stars," mining claim, and erected for the purpose of crushing *the* reducing the ores from the said claims; and also all of the machinery, appliances, equipments, appurtenances around, about and in any way connected with said mill, completing the same and used in operating it; all mining, milling and blacksmith tools, implements, appliances and supplies, in, about, around and pertaining to the Hillside mining camp and works; all provisions, goods, wares and merchandise, houses, buildings, water, water rights, easements, rights of way, roads, fences, and improvements upon the mesa lands in use for pasture; kitchen and household furniture belonging to the parties of the first part of, in and around said mining camp and conveyed property; also five freight wagons, two team wagons, and all horses, mules and burros belonging to said parties of the first part and being branded "J L." excepting four horse- to be selected by the parties of the first part; the harness belonging to and completing the freight teams.

Also all and singular the sawed, hewen, shaven or split lumber at or around said mining camp and at the camp wood saw-mill camp and vicinity, and the frame or board houses at said camp, belonging to the parties of the first part; one pair of scales at Garland station on the P. & A. C. R. R., and all ores upon the dump at said mining claims, concentrations and tailings at said camp or premises.

Together with all and singular the tenements, hereditaments, and appurtenances, dips, spurs and angles, rock, ores and earth, timber and water, in and about and around said described property and premises belonging or in anywise appertaining.

To have and to hold all the above mentioned and described property and premises unto the said party of the second part, his heirs and assigns forever.

And the said parties of the first part do*th* hereby covenant that

they have the fee-simple title to the Hillside, Seven Stars, Happy Jack, Contact No. 1, Contact No. 2 and Camp mining claims, and they do*th* further covenant with the said Charles Cowland and his legal representatives and assigns that said mining claims last mentioned are free from all incumbrances and that they will, and their heirs executors and administrators shall warrant and defend the same to the said Charles Cowland, his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever, except as against taxes since the year 1891.

In witness whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

—— ——.
—— ——.
—— ——.

TERRITORY OF ARIZONA, } *ss:*
*County of Yavapai,* }

Before me —— ——, a notary public in and for the county of Yavapai aforesaid, on this day personally appeared John Lawler, Ed. W. Wells and Rosa G. Wells, wife of the said Ed. W. Wells, known to me to be the persons whose names are subscribed
31 to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration therein expressed.

And the said Rosa G. Wells, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Rosa G. Wells, acknowledged, the said instrument to be her act and deed and declared that she had signed the same for the purpose and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this twelfth day of May, 1892.

—— ——,
*Notary Public.*

32 EXHIBIT B.

This indenture, made this fifteenth day of June, A. D. 1892, between Charles Cowland, of the city of Denver, Arapahoe county, Colorado, party of the first part, and the Industrial & Mining Guaranty Company, a corporation of the State of New Jersey, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of four hundred thousand dollars ($400,000) to him in hand paid by the said company, party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these presents doth bargain, grant, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all and singular the following-described mining claims, situate lying and being in the Eureka mining district, in the county of Yavapai and Territory of Arizona, viz:

The "Hillside," "Seven Stars," "Happy Jack," "Contact No. 1," "Contact No. 2" and "Camp."

Each and all of said claims were conveyed by patents from the United States to one John Lawler and one Beverly T. Riggs, and by said Riggs to said Lawler and Ed. W. Wells.

Also all and singular all the right, title, and interest, estate, claim and demand, the possession and right of possession of the
33 party of the first part of, in and to the following-described mining claims and mining locations, situate, lying and being in the said Eureka mining district in said county and Territory.

The said claims are upon the public lands of the United States and are held by the party of the first part by possession, who, by these presents, conveys the right, title and interest he has in and to the same, namely:

"The Midnight" located January 1st, 1892, a record of which location is made in Book 33, records of mines of said county of Yavapai, at page 232;

"The Waterfall," located January 1st, 1892;

"The Morning Glory," located January 1st, 1892;

"Water," located January 1st, 1892;

"Hidden Treasure," located January 1st, 1891;

"Sucker," located January 4th, 1891;

"Side," located June 21, 1890.

"Purple Rose," located August 10, 1886;

"Southern Belle," located March 11, 1887;

"Lucky Cuss," located June 23, 1887;

"Robert E. Lee," located June 23, 1887;

"Centipede," and "Good Enough."

Also, all that certain five-stamp steam quartz mill situate upon the said "Side" mining claim and adjacent to said "Hillside" and "Seven Stars" mining claims, and erected for the purpose of
34 crushing *the* reducing the ores from the said claims; and also all of the machinery, appliances, equipments, appurtenances around, about and in any way connected with said mill, completing the same and used in operating it; all mining, milling, blacksmith tools, implements, appliances, and supplies in, about, around and pertaining to the "Hillside" mining camp and works, all provisions, goods, wares and merchandise, houses, buildings, water, water rights, easements, rights of way, roads, fences and improvements upon the mesa lands in use for pasture; kitchen and household furniture belonging to the party of the first part of, in and around said mining camp and conveyed property; also five freight wagons, two team wagons and all horses, mules and burros, belonging to said party of the first part and being branded "J L" and the harness belonging to and completing the freight teams.

Also, all the sawed, hewn, shaven and split lumber at and around said mining camp and at the camp wood saw-mill camp and vicinity, and the frame or board houses at said camp belonging to the party of the first part; one pair of scales at Garland station on the P. & A. C. R. R. and all ores upon the dump at said mining claims, concentrations and tailings at said camp or premises.

Together with all and singular the tenements, here*ditiments*, and appurtenances, dips, spurs, and angles, rock, ores and earth, timber and water in and about and around said described property
35 and premises belonging or in anywise appertaining.

To have and to hold all of the above mentioned and described property and premises unto the said party of the second part, his successors and assigns forever.

And the said party of the first part doth hereby covenant that he has the fee-simple to the "Hillside," "Seven Stars," "Happy Jack," "Contact No. 1," "Contact No. 2" and "Camp," mining claims; and he doth further covenant with the said Industrial & Mining Co., its legal representatives and assigns that said mining claims last mentioned are free from all encumbrances, and that they will and his heirs, executors and administrators shall warrant and defend the same to the said Industrial & Mining Guaranty Co. and its assigns forever against the lawful claims and demands of all persons whomsoever, except as against taxes since the year 1891.

In witness whereof the said party of the first part hereto has hereunto set his hand and seal the day and year first above written.

CHARLES COWLAND. [L. S.]

Witness:
R. S. HUDSPETH.

STATE OF NEW YORK, }
*City and County of New York*, } *ss*:

On this fifteenth day of June, A. D. 1892, before me, the
36 undersigned, a notary public in and for the city and county of New York, personally appeared Charles Cowland, to me personally known to be the individual whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and considerations therein expressed.

Given under my hand and seal of office this fifteenth day of June, A. D. 1892.

[L. S.]

JAMES P. MORRIS,
(#70) *Notary Public, N. Y. Co.*

37 EXHIBIT C.

Guaranteed quarterly dividends in gold, together with an agreement to redeem the stock at par within a definite period at the expiration of two years if desired, are the novel features offered investors in an already producing gold mine in Arizona, one of the greatest properties in this country.

Seven Stars Gold Mining Company.

*
*
* *
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* *

Incorporated under the laws of the State of New Jersey.

Fully paid and non-assessable. No individual liability whatever.

Capital, $3,000,000. 600,000 shares, $5 each.

Of which 200,000 shares, 15 per cent. guaranteed stock at $5 per share are now offered for public subscription, payable as follows:

$1.00 per share on application; $1.00 per share on allotment; $3.00 per share 30 days after allotment.

On all stock allotted on this subscription, dividends of 15 per cent. per annum for 5 years will be guaranteed, as hereinafter stated. It must be understood however, that the holders of the 15 per cent. guaranteed stock participate in the full earnings of the company. Dividends are expected to largely exceed this amount.

Directors.

Hon. Warner Miller, president Nicaragua Canal Co., 44
38 Wall street, New York.

Hon. John W. Vrooman, director Holland Trust Co., New York. Also director Herkimer bank, Herkimer, N. Y.

Arthur G. Yates, president Buffalo, Rochester & Pittsburg railway, Rochester, N. Y.

B. E. Chase, director Central Bank of Rochester, Rochester, N. Y.

J. Clifford Richardson, president Chemical national bank, St. Louis, Mo.

Hon. R. S. Hudspeth, Jersey City, New Jersey.

H. H. Warner, president H. H. Warner & Co., Rochester, N. Y.

J. Herbert Jefferes, secretary the Whitney Glass Works, 277 South Front St., Philadelphia, Pa.

C. B. Wiser, of R. B. Crouch & Co., 37 Market St., Chicago, Ill.

Counsel.

Hudspeth & Collier, 243 Broadway, N. Y.

Subscription books will be opened at 10 o'clock a. m. October 6, 1892, and closed on or before 3 p. m. October 11, 1892.

Subscriptions will be received by

Industrial & Mining Guaranty Company, 41 Broadway, New York.

Chemical national bank, St. Louis, Mo.

J. Herbert Jefferis, of the firm of the Whitney Glass Works, 227 South Front St., Philadelphia, Pa.

C. B. Wiser, of the firm of R. B. Crouch & Co., 37 Market street, Chicago, Ill.

Or any of the above-named directors.

*Prospectus.*

This company presents an unusual opportunity for in-
39 vestors to acquire an interest in one of the richest and most extensive gold mines in the world, in which not only are dividends payable quarterly in gold, of 15 per cent., per annum on all stock allotted on this subscription guaranteed them for five years, should they become dissatisfied with their investment, as hereinafter stated. Hon. H. H. Warner of "Warner's Safe Cure" fame, after spending several weeks in critically examining this mine, in which he was aided by some of the most experience- mining engineers of this country and Europe, is so thoroughly convinced of the extraordinary value of the property that he has expressed his readiness to place himself at the head of the undertaking if so desired, and has also agreed to take 100,000 shares in the company.

In order to confirm the success of the enterprise, he guarantees to every shareholder to whom is allotted stock on this subscription a dividend of 15 per cent. per annum for a period of five years, payable in gold, unless a total of seventy-five per cent. shall have been paid within a shorter time.

He also further agrees to purchase at par in gold all guaranteed stock allotted on this subscription within the 30 days immediately following the expiration of two years from date of allotment of said stock, provided he receives said 30 days' notice of such stockholder's desire to sell.

These provisions as to dividends and redemption of stock will be
40 legally expressed and signed by guarantor on each certificate allotted on this subscription.

Besides his high personal standing and unquestioned responsibility, Mr. Warner agrees to deposit, in trust, with the Industrial and Mining Guaranty Company of New York, bonds or stocks of railroad or industrial corporations to an amount necessary to provide for the full payment of the five years' dividends, guaranteed on all stock allotted on this subscription; only such securities to be deposited as are dealt in on either the New York or London stock exchange.

In consideration of this guarantee the vendors agree to deposit with the Union Trust Company, of 80 Broadway, New York, stock of the Seven Stars Gold Mining Company of the value, at par, of

five hundred thousand dollars, to be held in trust by the said Union Trust Company until the guarantee given by Mr. Warner as set forth in this prospectus, shall have been fulfilled.

This novel feature, while presenting an unusual departure in mining enterprises, is warranted by the fact that the value of the ore in the mine already exposed, surveyed and ready for removal exceed- the total amount of dividends guaranteed by $1,250 000. In addition to this, it is estimated that an expenditure of $100,000 will disclose additional ore to the value of $3,000,000. It will readily be perceived that Mr. Warner assumes but little actual risk in his guarantee when the immense body of ore already de-
41 veloped and ready for removal is taken into account; the proposition being not unlike the cash reserves in a bank, subject to be drawn upon as occasion requires.

The magnitude of the property may in some degree be realized from the fact that, with a 5-stamp mill, the output of the mine is at present about $1,000 per day. With 20 additional stamps, now in course of construction, the output should reach $5,000 per day. Allowing 300 working days to the year, this would bring the annual production of the mine up to $1,500,000. As a matter of fact, the enormous quantity of ore in sight would warrant the erection of a 75-stamp mill at once.

Objects.—This company is formed to acquire, without further expense or liability to subscribers, on October 1st, 1892 as a "going concern," and to provide a working capital of $200,000 to further equip and develop the Seven Stars, Hillside Camp, Contact No. 1 and Contact No. 2. Also the locations known as the Mesa, Elwood, Midnight, Mescal, Waterfall and Boulder.

Situation.—These mines are in the Eureka Mining district Yavapai county, Arizona, 50 miles from Prescott, Arizona, — although a comparatively new mining field, has already produced seventy-two millions of dollars ($72,000,000) in gold and silver.

What is their record?—This very rich gold vein was found by John Lawler on the evening of March 11, 1887. He developed the discovery into a great and very rich mine. While opening
42 up the property, he broke ore of the value of $200,000, of which some $180,000 was sold. (See smelters' certificates of sale, 4th page.) Since that time, the workings have been very much extended, and the mine has continued to improve in value and richness.

Present value.—The ore that has been removed, as shown by the enclosed map, was taken from near the surface and is hardly noticeable in the present magnitude of the mine. Not only is this a virgin mine but it is also a fully proved and very extensive property. Conservative estimates made by thoroughly reliable engineers place the ore in sight, ready to remove, at $2,000,000. (See engineer's reports, 3d page.) — is considered that an estimated expenditure of $100,000 will disclose additional ore to the value of $3,000,000.

Future prospects.—Upon completion of the new mill—to say nothing of the additional mills which it is proposed to erect—the property should earn very large dividends for many years. This ex-

pectation is justified by the almost unlimited amount of ore in reserve.

Gold or silver.—The smelter's certificate- of ore shipments, as per annexed statement, show that half the value is in gold, the remainder silver. Recent developments however, have uncovered ore bodies in which the gold is largely in excess of the silver.

Mine is dry; no pumping.—The mine is worked by levels
43 from the side of the mountain. No hoisting machinery is required at present, and will not be for a long time to come, and no pumps. Another tunnel can be run 75 feet below the present lowest level and still be above the foot of the mountain.

Cheap working.—The vein is soft and easily broken. The rock is such that no timbering is required. The driving of levels is done very rapidly and cheaply, twice as fast and for one-half the price usually paid.

Extent of the workings.—The underground workings, levels, cross-cuts, winzes, etc. are already 6,000 feet in aggregate length. Ore has been found to extend continuously for 2,000 feet along the lode. There is good ore in both ends of the mine; indeed some of the best ore is in the ends of the different levels, and also in the bottom workings. *No limit is yet known* to the extent of this great mass of ore.

Enormous amount of ore.—The lode is a true fissure and continuous. It has been followed for over two miles. Very rich ore has been obtained about 1,200 feet north of the present furthest workings of the mine, and it is certain that the ore extends that distance or more. Similarly, it is known to extend a long way south. Reference to the map shows how very little ore has as yet been removed, and what an enormous quantity is yet to be removed. The map indicates the great length of the ore body. Mr. Harrington Blauvelt, mining engineer who made
an examination of the mine at the time when developed only
44 1,800 feet in length, calculates, as shown in his annexed report, that for every 10 feet sunk on said length of 1,800 feet, ore to the value of $150,000 would be disclosed. On the generally accepted theory sustained by the history of mines, the depth of ore in a mine extends to about one-half of its length; this lode having been shown to extend north and south over two miles, a simple calculation will demonstrate the enormous quantity and value of ore that may yet be extracted.

Size of the property.—This mining property covers 210 acres. There are also valuable dam sites, water rights, timber claims and a town site.

Title.—The titles are unquestionable, the Seven Stars, Hillside, Happy Jack and other mines being held under United States patent.

Equipment.—The mines are provided in a very extensive manner with necessary buildings, such as company's trading store, assay offices, staff quarters, blacksmith and carpenter shops, suitable miners' boarding-house, lodging-house, mill and reduction works, engines and boilers, etc.

Water and fuel.—Boulder creek affords sufficient water for run-

ning a 40-stamp mill eight months in the year. A dam can be built which will afford water for the entire year, while wood, both for fuel and other purposes is readily obtainable. The company owns valuable timber claims, covering 180 acres.

Climate, etc.—The climate is warm and dry, very healthy, and permits of work being carried on every day in the year. Labor is good and plentiful.

*Extracts from Engineer's Reports.*

The mines have been examined by several distinguished mining engineers. They were sent separately and at various times to inspect the mines for intending purchasers. The reports are thoroughly to be relied upon, as coming from men of large experience and known integrity. The estimates made by these gentlemen are all of the most conservative character. No ore bodies enter into their estimates below or beyond the present working and tunnels.

The following extracts from the reports are of interest. The originals can be seen at 41 Broadway, New York.

Mr. Alfred Rickard, the manager of the "California mine" in Colorado, celebrated as the deepest gold mine in America, says in his report:—

"The workings consist of tunnels connected by shafts or winzes, which expose the lode for nearly 2,000 feet in length the extremities, both north and south, continuing in good ore. Such an unbroken length of paying ore is a feature of the property, and is worth of mention as belonging to mines of the highest order."

Mr. Harrington Blauvelt, a mining engineer engaged in the management of several mines in Arizona, made a very thorough and complete measurement of the ore ready to stope. Samples were taken across the vein every 10 feet throughout the mine workings. These samples weighed 10 to 50 lbs. each, and were thoroughly representative. On careful estimation he found that there were ready to remove 19,958 tons, worth $1,771,165.

"Some small corners of ground were not included in the above" so he says in his report. "Therefore I think $2,000,000 would be nearer the correct amount of ore in sight.

"I estimate that for each 10 feet in depth sunk below the present lower level, $150,000 of ore will be exposed to sight. This, with its present length, or a million and a half for the next hundred feet below the lower level. The winzes already sunk show up a good strong vein of solid ore." He also states in the same report: "The vein is practically all ore." Speaking of the rich ore found on the Happy Jack claim he says: "I look for this unexplored block of ground to equal the ground already opened in richness and extent of ore."

"It is a great lode, and when developed with depth will make one of the most remarkable mines in the West, and compare favorably with the famous Ontario, Granite Mountain, Drumlummon *et al.*"

It is to be added that Mr. Blauvelt's report was written a year

ago; since then, as shown in the other engineer's reports recently received, the levels have been much extended and a very large addition made to the ore in sight.

47 Mr. Alex. O. Brodie, a civil and mining engineer, at present engaged in the working of some neighboring properties says, in his report:

"I have known of the Hillside property ever since its discovery, and have heard of the success financially during the time of its development, but until I made a survey of the work accomplished, saw the large bodies of rich ore, the small amount stoped out, and the large bodies blocked out and ready to be stoped, I had no idea of the magnitude of the mine. The ore bodies are continuous."

"In conclusion I desire to say that I consider the property one of the most valuable that it has ever been my fortune to know."

Mr. G. A. Purbeck, an investor who looked at the property from the point of view of a business man, says in his report:

"On careful estimation I find the following to be the amount of and value of the ore in sight:

| | |
|---|---|
| Above No. 2 level, 7,500 tons | $525,000 |
| Above No. 3 level, 15,000 " | 975,000 |
| Bet. No. 3 and the new adit, 14,000 tons | 910,000 |
| Total | $2,410,000 |

"To sum up I have seen that the mine is of extraordinary size and value. I have confirmed this by measurement and assay, and became practically aware of the ease, cheapness and rapidity

48 with which it can be developed. I know its past record and I can judge something of the brilliant future which must await it. As a business man, therefore, it appears to me to offer a rare opportunity and an investment giving very large profits under very unusual security."

Mr. T. A. Rickard, associate of the Roayl School of Mines, fellow of the Geological Society, member of the American Institute of Mining Engineers, a mining engineer whose experience covers Australia and New Zealand, as well as the chief mining centers of Europe and America, says in his report:

"The examination of the underground workings leaves a strong conviction of the great value of the mine, and the ease with which it can be worked."

"To an engineer the very unusual continuity of the ore bodies is very striking, while the extent of the ground already developed evidences the large value of ore uncovered, and gives the best of promise for the further extension, north and south, of the ore shoots."

"The lode has been followed for a distance along its course of 1,875 feet, and the length of the various underground workings amount to nearly 6,000 feet. Notwithstanding this however, it is no exaggeration to say that the mine is yet in its infancy of development."

"The levels have been driven in pay ore practically for their en-

tire length (1,875 feet), and there is every reason to expect that further examination will give equally as good results."

49 Referring to the very low cost at which the driving of the levels and cross-cuts has been accomplished, he states:

"These figures are most unusual, and, though my acquaintance with mines covers a very wide range, I cannot remember an instance of cheaper work. The description of the formation given in the earlier portion of this report will explain how this is brought about. The vein is nearly vertical, while the rock through which it cuts lies nearly horizontal. The layers are two and three inches thick, and, while hard, are separated by softer seams of lesser thickness. Such ground always, as a miner puts it, 'breaks easy.' But usually when the rock is broken with such facility, it also requires timbers to support it. That is so where the structure of the rock is highly inclined. But here, where it is flat, the conditions are very different and infinitely more favorable. In this mine where a cross-cut is driven from the main lode in search of the numerous parallel veins, or when a level is pushed forward, the rock on either side stands up like a wall of masonry and requires no timbers for its support."

"The lode, so far, has been worked without the sinking of shafts, save such as are required to connect the levels. Usually the ore bodies of a mine are of known length and, once determined, the plan adopted is to follow them down. Here the ore is still in the ends of the levels, though they are already very long, and

50 there has as yet been no limit shown to the extent north and south of the very large ore body of the mine. That valuable ore bodies will be found far beyond the limits of the present workings is demonstrated by the work done along the surface for over 500 feet south of the present ends of the underground workings, while north, ore of extraordinary richness (8 tons averages $539 per per ton; 1½ tons gave $1,740), has been found 1,150 feet beyond the present breast of the No. 3 north level."

"All the winzes sunk from the bottom of the deepest level (the No. 3) have gone down in ore, and as the depth of an ore shoot usually is in proportion to its length, there is every evidence of a further development of immense ore reserves as the workings become deeper."

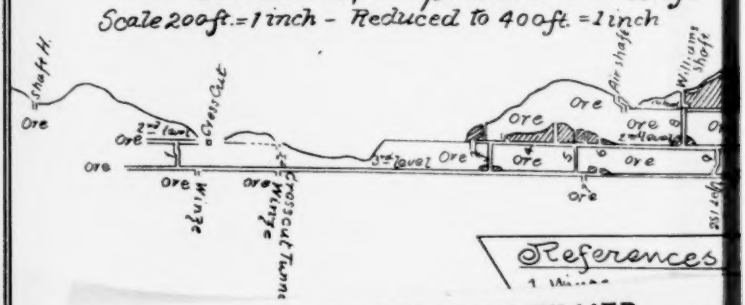
"It is thus seen that at the present time the ore body of the mine has no known limits, and that the property gives promise of a future which will place it in rank of the very greatest mines in the United States."

He concludes by saying:

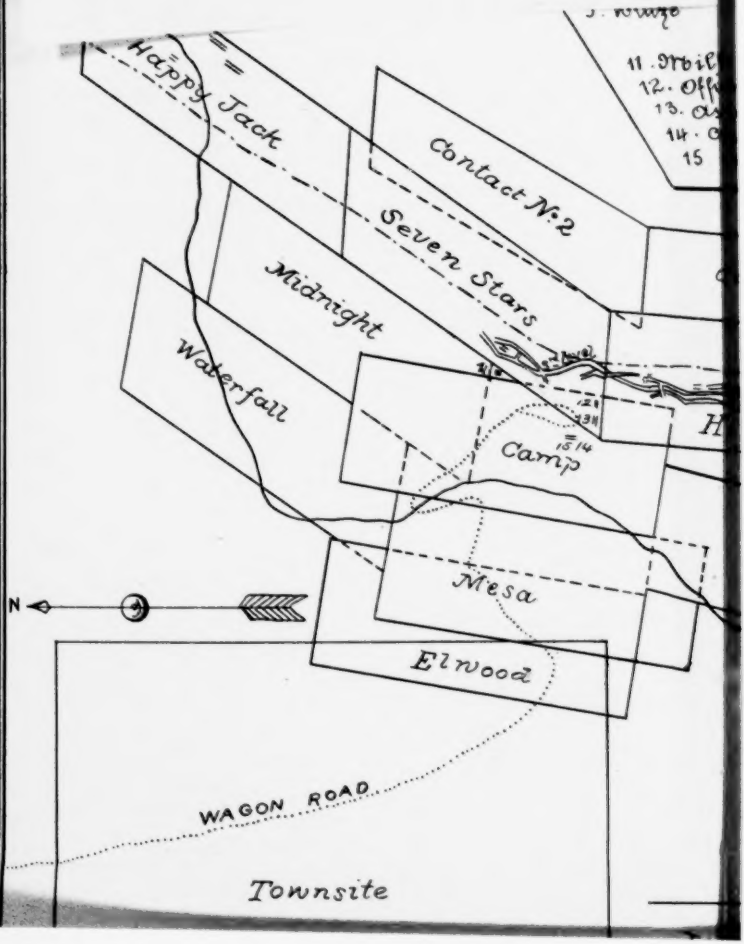
"It is difficult to convey to any one but those actually engaged in mining how unusually favorable are the conditions for cheap and rapid work, how extraordinary is the continuously ore-bearing character of the lode, and how great are the probabilities of the opening up of a mine of exceeding size and value.

"The mine is a new one, but also a very large one. It is virgin, and yet fully proved to be of immense value."

51 "All the conditions exist for the continued operation of a mining enterprise of an unusually profitable nature."




FOLD OUT IS TOO LARGE TO BE FILMED



Subscriptions.—The right is reserved to reject any subscription or to accept it in part before actual allotment. If any subscription is wholly rejected, the amount deposited on application will be returned.

Allotment.—If the whole amount applied for be not allot-ed the amount paid on application will be applied on sums to become due on the allotment. Receipt will be given for all payments made, and the company's engraved certificate will be delivered as soon as practicable after all payments have been made. Any installment may be paid in advance under discount at the rate of six per cent. per annum. Failure to pay any installment when due may forfeit all previous payments.

Registration.—All certificates will be registered and countersigned by the Union Trust Company of New York.

Dividends.—Dividends will be paid in gold quarterly, from date of allotment, at the office of the Industrial & Mining Guaranty Company, No. 41 Broadway, New York, U. S. A.

Quotations.—It is intended to list the shares and apply for stock-exchange quotations.

Information.—Prospectuses, maps, reports and further information may be obtained from Industrial & Mining Guaranty Company, 41 Broadway, New York.

New York, September 24, 1892.

(Here follows map marked p. 51*a*.)

52 *Tabulated Statement of Smelters' Sale Notes of Ore Shipped from the "Hillside" and "Seven Stars" Mines from June, 1887, to March, 1892.*

| Year. | Weight. | Gold per ton. | | Silver per ton. | | Value per ton gold and silver. | Total value. |
|---|---|---|---|---|---|---|---|
| | | Ozs. | Value. | Ozs. | Value. | | |
| 1887. | | | | | | | |
| June..... | 4,097 | 3.15 | $63.00 | 193.30 | $193.30 | $256.30 | $525.03 |
| | 7,202 | 1.30 | 26.00 | 142.15 | 142.15 | 168.15 | 605.51 |
| July..... | 853 | 1.21 | 24.20 | 106.07 | 106.07 | 130.27 | 55.56 |
| | 3,699 | 2.43 | 48.60 | 63.08 | 63.08 | 111.68 | 206.55 |
| | 11,386 | 4.05 | 81.00 | 60.00 | 60.00 | 141.00 | 802.71 |
| | 9,838 | 3.05 | 61.00 | 72.06 | 72.06 | 133.0 | 654 52 |
| October..... | 9,499 | 4.10 | 82 00 | 62.00 | 62.00 | 144.00 | 683.93 |
| | 3,985 | 3.10 | 62.00 | 96.04 | 96.04 | 158 04 | 314.89 |
| | 6,255 | 0.90 | 18.00 | 71.00 | 71.00 | 89.00 | 278.35 |
| | 21,244 | 5.05 | 101.00 | 66.15 | 66.15 | 167.15 | 1,775 47 |
| November... | 9,754 | 1.45 | 29.00 | 63.50 | 63.50 | 92.50 | 451.12 |
| | 11,430 | 4.45 | 89.00 | 80.04 | 80.04 | 169.04 | 966.06 |
| 1888. | | | | | | | |
| January..... | 7,682 | 6.75 | 135.00 | 218.00 | 218.00 | 353.00 | 1,355.87 |
| April..... | 6,845 | 7.20 | 144.00 | 99.06 | 99.06 | 243.06 | 831 87 |
| | 2,826 | 7.90 | 158.00 | 148.09 | 148.09 | 306.09 | 432.50 |
| May..... | 10,964 | 5.94 | 118.80 | 158.07 | 158.07 | 276.87 | 1,517.80 |
| | 6,670 | 9.35 | 187.00 | 154.06 | 154.06 | 341.06 | 1,137.43 |
| | 8,922 | 7.20 | 144.00 | 84.08 | 84.08 | 228.08 | 1,017.46 |
| | 17,434 | 4.36 | 87.20 | 90.03 | 90.03 | 177 23 | 1,544.91 |
| June ..... | 2,168 | 0.81 | 16.20 | 91.00 | 91.00 | 107.20 | 116.20 |
| | 24,865 | 4.00 | 80.00 | 69.05 | 69.05 | 149.05 | 1,853.06 |
| | 3,871 | 3.00 | 60.00 | 117.05 | 117.05 | 177.05 | 342.68 |
| | 5,281 | 4.95 | 99.00 | 43 03 | 43.03 | 142.03 | 375.03 |
| | 5,701 | 2.70 | 54.00 | 170.03 | 170.03 | 224.03 | 638.59 |
| | 1,780 | 6.25 | 125.00 | 55.06 | 55.06 | 180.06 | 160.25 |
| July..... ... | 8,744 | 3.78 | 75.60 | 110.08 | 110.08 | 185 68 | 811.79 |
| | 27,210 | 5.02 | 100.40 | 88.06 | 88.06 | 188.46 | 2,564.00 |
| | 11,918 | 2.00 | 40.00 | 103.08 | 103.08 | 143.08 | 852.61 |
| August. .... | 13,945 | 2.70 | 54 00 | 57.08 | 57.08 | 111.08 | 774.50 |
| | 30,989 | 4.50 | 90.00 | 132.00 | 132 00 | 222.00 | 3,439.78 |
| | 47,962 | 7.10 | 142.00 | 52.59 | 52.59 | 194.59 | 4,666.46 |
| 53 | 19,926 | 3.75 | 75.00 | 83.00 | 83.00 | 158.00 | 1,574.15 |
| October..... | 26,941 | 5.30 | 106.00 | 88.30 | 88.30 | 194.30 | 2,617.31 |
| November... | 43,536 | 7.80 | 156.00 | 97.07 | 97.07 | 253.07 | 5,508.83 |
| | 16,985 | 2.70 | 54.00 | 87.06 | 87.06 | 141.06 | 1,197.95 |
| | 16,989 | 7.32 | 146.40 | 118.04 | 118.04 | 264.44 | 2,246.28 |
| December.... | 12,640 | 2.02 | 40.40 | 52.30 | 52.30 | 92.70 | 585 86 |
| | 40,805 | 1.30 | 26.00 | 40.15 | 40.15 | 66.15 | 1,349.62 |
| | 8,845 | 1.68 | 33.60 | 89.10 | 89.10 | 122 70 | 542.64 |
| 1889. | | | | | | | |
| May..... | 22,100 | 5.00 | 100.00 | 229.70 | 229.70 | 329.70 | 3,643.18 |
| | 20,100 | 4.90 | 98.00 | 214.87 | 214.87 | 312.87 | 3,144.34 |
| June..... | 17,796 | 5.33 | 106.60 | 334.01 | 334.01 | 440.61 | 3,920.54 |
| | 17,678 | 6.13 | 122.60 | 152.01 | 152.01 | 274.61 | 2,427.28 |
| | 36,700 | 5.20 | 104.00 | 286.50 | 286.50 | 390.50 | 7,165.67 |
| | 18,300 | 8.30 | 166.00 | 217.50 | 217.50 | 383.50 | 3,509.02 |
| July..... | 49,000 | 5.35 | 107.00 | 374.60 | 374.60 | 481.60 | 11,799.20 |
| | 31,700 | 6.70 | 134.00 | 147.00 | 147.00 | 281.00 | 4,453.85 |
| August..... | 34,900 | 2.60 | 52.00 | 134.90 | 134.90 | 186.90 | 3,261.40 |
| | 35,150 | 3.70 | 74.00 | 253.30 | 253.30 | 327.30 | 2,752.29 |
| | 24,630 | 3.70 | 74.00 | 191.60 | 191.60 | 265.60 | 3,270.86 |
| Septe'b'r..... | 16,200 | 2.34 | 46.80 | 53.53 | 53.53 | 100.33 | 812.67 |

*Tabulated Statement of Smelters' Sale Notes of Ore Shipped, &c.*—Continued.

| Year. | Weight. | Gold per ton. | | Silver per ton. | | Value per ton gold and silver. | Total value. |
|---|---|---|---|---|---|---|---|
| | | Ozs. | Value. | Ozs. | Value. | | |
| October..... | 37,600 | 3.30 | $66.00 | 189.53 | $189.53 | $255.53 | $4,803.96 |
| | 29,600 | 1.60 | 32.00 | 75.60 | 75.60 | 107.60 | 1,592.48 |
| | 38,650 | 3.95 | 79.00 | 165.70 | 165.70 | 244.70 | 4,728.83 |
| November... | 38,250 | 1.45 | 29.00 | 43.60 | 43.60 | 72.60 | 1,388.47 |
| | 37,550 | 1.95 | 39.00 | 51.-0 | 51.20 | 90.20 | 1,693.50 |
| | 1,907 | 3.00 | 60.00 | 26.00 | 26.00 | 86.00 | 82.00 |
| | 2,153 | 4.02 | 80.40 | 44.20 | 44.20 | 124.60 | 134.13 |
| December.... | 40,860 | 5.01 | 100.20 | 180 01 | 180.01 | 280.21 | 5,724.69 |
| | 33,040 | 1.02 | 20.40 | 38.30 | 38.30 | 58.70 | 969.72 |
| 1890. | | | | | | | |
| January .... | 19,003 | 6.60 | 132.00 | 98.06 | 98.06 | 230.06 | 2,185.91 |
| March..... | 15,915 | 2.04 | 40.80 | 111.00 | 111.00 | 151.80 | 1,207.95 |
| April..... | 15,913 | 3.13 | 62.60 | 113.67 | 113.67 | 176.27 | 1,402.49 |
| May..... | 4,154 | 2.20 | 44.00 | 137.15 | 137.15 | 181.15 | 376.25 |
| | 24,485 | 2.50 | 50.00 | 62.50 | 62.50 | 112.50 | 1,377.28 |
| Sept'b'r..... | 36,190 | 2.00 | 40.00 | 34.02 | 34.02 | 74.02 | 1,339.39 |
| | 40,000 | 3.86 | 77.20 | 65.75 | 65.75 | 142.95 | 2,859.00 |
| October..... | 42,272 | 5.20 | 104.00 | 75.08 | 75 08 | 179.08 | 3,785.03 |
| | 19,133 | 7.60 | 152.00 | 135 02 | 135.02 | 287.02 | 2,745.78 |
| | 8,401 | 3.40 | 68.00 | 67.06 | 67.06 | 135.06 | 567.32 |
| 1891. | | | | | | | |
| January ..... | 8,064 | Trace. | ..... | 394.00 | 394.00 | 394 00 | 1,588.60 |
| February .... | 19,133 | 6 86 | 137.20 | 140.07 | 140.07 | 277.27 | 2,652.50 |
| | 42.272 | 5.43 | 108.60 | 79.03 | 79.03 | 187.63 | 3,965.75 |
| May..... | 26,345 | 6 68 | 133 60 | 99.02 | 99.02 | 232.62 | 3,064.18 |
| July..... | 31,413 | 2.80 | 56.00 | 151.90 | 151.90 | 207.90 | 3,265.38 |
| | 22,180 | 1.50 | 30.00 | 84 09 | 84.09 | 114.09 | 1,265.26 |
| | 31,413 | 3.33 | 66 60 | 149.97 | 149.97 | 216.57 | 3,401.55 |
| | 1,729 | 6.00 | 120.00 | 95.02 | 95.02 | 215.02 | 105.88 |
| October..... | 17,505 | 8.49 | 169.80 | 131.61 | 131.61 | 301.41 | 2,638.09 |
| | 50,010 | 1 96 | 39.20 | 75.74 | 75.74 | 114.94 | 2,874.07 |
| | 34,899 | 1.20 | 24.00 | 54.06 | 54.06 | 78.06 | 1,362.10 |
| November ... | 3,262 | ..... | ..... | 1,160.00 | 1,160.00 | 1,160.00 | 1,891.96 |
| | 2,783 | ..... | ..... | 364.00 | 364.00 | 364.00 | 506.50 |
| December.... | 37,940 | 7.25 | 145.00 | 151.60 | 151.60 | 296.60 | 5,626.50 |
| 1892. | | | | | | | |
| January ..... | 23,865 | 6.62 | 132.40 | 183.83 | 183.83 | 316.23 | 3,773.41 |
| March..... | 2,247 | 0.80 | 16.00 | 222.12 | 222.12 | 238.12 | 267.52 |
| | 5,220 | 4.20 | 84.00 | 59.40 | 59.40 | 143.40 | 314.27 |
| | 1,685 | 7.70 | 154.00 | 361.08 | 361.08 | 515.08 | 433.95 |
| Total value of ore sold..... | | | | | | | $178,637.08 |

The above statement is tabulated from smelters' sale notes which can be seen at 41, Broadway, New York. The notes were not selected, but taken just as they came from the smelters. The ore covered by these returns was taken from that part of the mine stoped out, as shown on enclosed map. But few shipments of ore have been made since March. There has been, however, no cessation of work, the ore having been allowed to accumulate at the mine to be treated on the ground, and thus save largely in the cost of transportation.

55 EXHIBIT C.

Seven Stars Gold Mining Company.

* * * * * * *

Capital, $3,000,000; 600,000 shares, $5 per share.

*Form of Application for Shares.*

Directors of Seven Stars Gold Mining Company, 41 Broadway, New York.

GENTLEMEN: I hereby apply for — shares at the par value thereof ($5 per share), of the capital stock of Seven Stars Gold Mining Company, recently incorporated under and by virtue of the laws of the State of New Jersey, and enclose the $1.00 per share deposit, or — dollars, required on application for — shares in the above company, and I hereby request that you will allot me that number, and I agree to accept such shares, or any smaller number you may allot me, upon the terms and conditions of the prospectus, and I request you to place my name on the register of shareholders in respect of the shares which you may so allot to me, and I agree to pay the balance as required in terms of said prospectus.

Signature: —— ——.
Name (in full): —— ——.
56 Address: ——.
Date of application: ——.

Seven Stars Gold Mining Company.

Capital, $3,000,000; 600,000 shares, $5 per share.

*Receipt.*

Received, this — day of ——, 1892, of —— —— the sum of — dollars, being deposit of one dollar per share on application for — shares in the Seven Stars Gold Mining Company.

—— ——.

(This form to be sent, with the deposit, to the Industrial and Mining Guaranty Co., 41 Broadway, New York, or any of the bankers, directors or brokers authorized in the prospectus to receive subscription. Checks for the first payment of $1.00 per share should be drawn to the order of the bankers, brokers, director or firm to whom the subscription is sent.)

57

"EXHIBIT D."

The Industrial and Mining Guaranty Company,

41, Broadway, New York,

Is prepared to receive applications through the Commercial Bank of Scotland, Limited, 39, Lombard street, E. C.,

For 50,000 shares of $5 (£1) each at 5s. premium

of the

Seven Stars Gold Mining Company,

(Incorporated under the laws of the State of New Jersey, U. S. A.),

Upon which a minimum dividend of 15 per cent. per annum for five years is guaranteed unless a total of seventy-five per cent. shall have been paid within a shorter time.

Price of issue, twenty-five shillings, payable as follows:

Five shillings per share on application
Five shillings per share on allotment
Fifteen shillings per share 30 days after allotment.
After which there is no further liability.
Subscriptions returned in full if no allotment made.

Capital $3,000,000 (£600,000),

In 600,000 shares of $5 (£1) each,

Of which 200,000 are guaranteed a minimum dividend of 15 per cent. per annum, which is secured for five years by the deposit of marketable securities with the Industrial and Mining Guaranty Company; 50,000 of these guaranteed shares are offered here and the balance in New York.

58

Directors.

Hon'ble Warner Miller, president Necaragua Canal Company, 44, Wall street New York.
A. G. Yates, Esq., president Rochester and Pittsburg Railroad Company, Rochester, New York.
B. E. Chace, Esq., treasurer National Casket Company, Rochester New York.
Senator R. S. Hudspeth, Jersey City, New Jersey.
Hon'ble John W. Vrooman, Esq., director Holland Trust Company, New York. Herkimer bank, Herkimer, New York.
J. Clifford Richardson, Esq., president Chemical National bank, St. Louis.
J. Herber Jefferis, Esq., secretary The Whitney Glass Works, Philadelphia.
C. B. Wiser, Esq., R. B. Crouch & Co., Chicago.

London agents.

Messrs. Tarbutt & Quentin, 23, S. Swithin's lane, E. C.

Bankers.

The Commercial Bank of Scotland, Limited, London.
The National Continental Bank, New York.
The Bank of Arizona, Prescott, A. T.

Brokers.

Messrs. Sutton & Co., 22, Royal Exchange, E. C.

Auditors.

Messrs. Hart Brothers, Tibbetts & Co., 25, Pine street, New York.
Messrs. Black & Geochegan, 8, Old Jewry, London, E. C.

Solicitors.

Messers. Roy & Cartwright, 4, Lothbury, London, E. C.

59 The Industrial and Mining Guaranty Company have exercised the greatest care and taken every precaution to satisfy themselves of the undoubted value of the property; also that the value of the ore actually in sight and ready to take out is greatly in excess of the amount required to pay the guaranteed dividends.

As an additional precaution they stipulated with the vendor company that they should deposit securities to the amount of the guarantee, and they now hold in their possession marketable stocks and bonds having a quotation on the New York or London exchanges of an amount sufficient to pay 15 per cent. dividend for five years on the guaranteed stock now offered.

The mines owned by the company are situated in the Eureka mining district, Yavapai county, Arizona, 50 miles from Prescott, on the Arizona Central railway. Arizona has, although a comparatively new mining field, already produced seventy-two millions of dollars ($72,000,000) in gold and silver.

The mine was discovered in March, 1887. While opening up the property, ore of the value of over £40,000 was taken out in gold and silver, of which some £36,000 was sold (see smelters' certificates of sales). Since then the workings have been much extended, and the mine has continued to improve in value. The ore sold up to now has realised upon an average about £42 per ton.

The mine is so extensively opened up that the quantity hitherto removed, as shewn by the enclosed map, is hardly missed;
60 while practically virgin, it is fully proved.

Conservative estimates, made by thoroughly reliable engineers, place the value of the ore in sight ready to take out at £400,000. It is considered that a further expenditure of £20,000 will open up another £600,000 worth of ore.

The property has been examined and tested by several mining engineers of the highest ability and repute (as will be seen by the accompanying very exhaustive plans and reports) and being so

satisfied, the Industrial and Mining Guaranty Company, can offer the investment to the public with the greatest possible confidence.

Before accepting the agency of this company, Messrs. Tarbut & Quentin, instructed their representative Mr. H. E. Armitage to report upon the mine, and he states that there is £300,000 worth of ore now in sight; that great facilities exist for working the mine cheaply, and that a most valuable property has been developed.

Mr. Armitage is an engineer who has had vast experience in mining, and as he has spent over a month on the property, he has had ample opportunity of forming a reliable opinion.

Messrs. Tarbutt & Quentin have great faith in Mr. Armitage's judgment, owing to their long acquaintance with him, and they feel satisfied from his report that this will be one of the largest dividend-paying mines in the world and they are themselves applying for a considerable amount of this issue.

61 The mining property embraces an area of 210 acres. There are also valuable dam sites and water rights, timber claims and a town site. The chief feature of the mine is, that the pay ore is continuous, and not confined to rich chutes as in most cases; over the entire length of 2,000 feet, hitherto developed, the grade is practically uniform, and the ends of all levels are in rich ore.

The title is indefeasible, being United States patent, to five claims, together with several locations as easements.

The mines are provided in a very complete manner, with all the necessary buildings, such as company's trading store, assay offices, staff quarters, blacksmiths' and carpenters' shops, stable, miners' boarding-house, lodging-house, &c., &c., an extensive milling and amalgamating plant is in course of erection. The company will have a working capital of £40,000. At present a five-stamp mill is returning $1,000 per day.

Boulder creek flows within 100 yards of the mine, and affords sufficient water power for running 40 stamps, eight months in the year. A dam is in course of construction, which will afford water for the entire year, while wood, both for fuel and mine purposes, is readily obtainable. The company owns valuable timber claims, covering 180 acres.

Dividends will be paid quarterly, as from 1st October, 1892, at the offices of the Industrial and Mining Guaranty Company, 41
62 Broadway, New York, the Commercial Bank of Scotland, Limited, 39, Lombard street, London, E. C.

The scrip will bear the endorsement of the Industrial and Mining Guaranty Company, guaranteeing the minimum dividend of 15 per cent., also an undertaking to repurchase the shares at par (at the option of the holder) within 30 days after the expiration of 2 years from the date of allotment, upon receipt of such 30 days' notice.

Forms of application for shares, together with copies of plans, reports, &c., can be obtained from the bankers, London agents, brokers or solicitors.

Attention is called to the accompanying pamphlet, containing extracts from engineers' reports, shipments of ore, &c.

A share register will be kept at the London agency, where shares can be transferred, and fresh certificates issued.

London, September 27th, 1892.

For private circulation only.
Seven Stars Gold Mining Company.
Prospectus.

63 EXHIBIT E.

The annexed deed from John Lawler and Ed. W. Wells to Charles Cowland, dated May 12, 1892, conveying the Hillside group of mining claims, being all the mining property known as the "Hillside group," situated in Eureka mining district, Yavapai county, Arizona Territory, is deposited in escrow with the Bank of Arizona at Prescott, Ariz., and is to be held and delivered by said bank upon the following conditions and those only:

"Exhibit E."

The said bank is hereby directed to deliver the said deed to said Cowland, his heirs or assigns upon his or their paying or causing to be paid into said bank and the Park National Bank of New York City, and the Bank of California at San Francisco, as hereinafter provided for, the full sum of four hundred and fifty thousand dollars ($450,000) as follows:

Twenty thousand dollars ($20,000) to be paid this day by checks for said amount on Denver, Colorado, signed by H. H. Warner, divided as follows: Ten thousand dollars to said Wells and ten thousand dollars to said Lawler;

In thirty days from this date eighty thousand dollars in cash with this proviso, however, that said Cowland may, of this $80,000 to be paid within thirty days of the date hereof, pay thirty thousand dollars thereof on said date, and twenty-five thousand dollars on or before six months from this date; that is, the said twenty-five

64 thousand dollars shall be paid at the same time as hereinafter provided for the second payment of the said purchase price; and the balance thereof, to wit, twenty-five thousand dollars shall be paid on or before the twelfth day of May, 1893 that is to say: the said twenty-five thousand dollars, being the balance of the first payment may be made at the time the third payment of the purchase price, hereinafter provided for; it being agreed and understood, however, that each of said payments of twenty-five thousand dollars, which are a part of the first payment under this contract, but by a special arrangement, carried over to the second and third payments, shall bear interest at the rate of ten per cent. per annum from the date hereof;

The second payment, to wit, one hundred thousand dollars in addition to the twenty-five thousand dollars aforesaid, shall be made on the twelfth day of November, 1892;

The third payment, to wit, the sum of one hundred and twenty-five thousand dollars in addition to the second twenty-five thousand dollars as aforesaid, shall be made on or before the twelfth day of May, 1893; and

The fourth payment, to wit, one hundred and twenty-five thousand

dollars (which payments aggregate four hundred and fifty thousand dollars, said purchase price) shall be made on or before the twelfth day of November, 1893.

It being hereby mutually agreed that each and all of said payments shall bear interest from the date hereof until paid at the rate of ten per centum per annum.

65 It is further agreed and understood that the aforesaid payments shall be made, if not otherwise agreed upon, as follows:

One-third thereof at the Bank of Arizona, at Prescott, Ariz., for the credit of said Lawler & Wells;

One-third thereof at the Park National bank at New York city; and

One-third thereof at the Bank of California, at San Francisco.

The amounts paid in said Park National bank and Bank of California are to be credited to the Bank of Arizona, which said Bank of Arizona is to credit the same to the account of said Lawler & Wells, under this contract.

That the said Cowland has the right to make any or all of said payments before the same are due, as hereinafter specified, and from the date he deposits with any of said banks, any part of said purchase price under this contract, interest on the amount so deposited, shall cease from that date.

In case of the failure of said Cowland to make or cause to be made, any of said payments of money at the time or times and in the manner herein stated, full and complete, then the said Bank of Arizona, upon demand thereof being made by said Lawler and Wells or their representatives, shall, and it is hereby directed to deliver said deed to said Lawler & Wells or their representatives; and in the event of such failure of said Cowland to make or

66 cause to be made any or all of said payments as above stated, then all payments of money theretofore made by said Cowland on the purchase price of said property shall be forfeited by him, and he hereby agrees and covenants to and with said Lawler & Wells that all money theretofore paid by him as the purchase-money of said property shall belong to them and shall be retained by them as liquidated damages accruing to them for the failure of said Cowland to purchase, take and pay for said property as hereinabove stated and stipulated. And the said Lawler & Wells shall be at once released and discharged from any further duty or obligation to sell and convey the property mentioned in and described by said deed.

It is further agreed that said Cowland by himself and his agents, may at once enter into and upon said property mentioned and described in said deed and take possession thereof, subject, however, to the legal possession of said Lawler and Wells, and the said Cowland may use, possess, explore, develop, work and operate the same, and all the proceeds derived from such use, development, operating and working of the same, and from the ores taken therefrom shall be at once paid to said Lawler & Wells, and be applied to and credited upon the payments hereinabove stipulated to be made by said Cowland; they, said Lawler & Wells to notify the said Bank of Ari-

zona of such payments, and such payments to have the same effect as if deposited with the said bank and to be part of the pur-
67 chase price of said property. And on any amounts so paid, interest thereon shall cease from the date of such payment.

It is further agreed that said Lawler and Wells shall retain and remain — the possession of said property described in said deed, until the full payment of the purchase price and interest as above stated shall be made, and said Cowland hereby recognizes and agrees to such possession and any and all use made of said property or any part thereof by or on the part of said Cowland, shall be considered of said Lawler & Wells' possession as aforesaid, but said Lawler and Wells shall not work the property or operate the said mines, nor shall they work or use the said personal property, nor shall they interfere with the use, working and operation thereof by said Cowland.

It is further agreed that if the said Cowland shall fail to make the payments as above stated, and shall fail to take and pay for said property as above stated, that all improvements made upon said property, and all developments thereon and therein, and all ores taken therefrom, shall be the property of said Lawler and Wells, and shall not be removed by said Cowland, and the cost and expense thereof shall in no manner be a charge against said Lawler and Wells or against said property.

It is further agreed that said Cowland shall have the right to work and operate the mill and machinery and to use all the property, real and personal, mentioned and described in said deed
68 during the continuance of this contract and until the forfeiture thereof on his part. And in case of a forfeiture of said contract on the part of said Cowland, by failure to comply with any of the provisions thereof or to make any payments as herein provided for, then he agrees to at once surrender and deliver possession of said property to the said Lawler and Wells.

The said Lawler & Wells hereby covenant, promise and agree to and with the said Cowland that when and at the time of the delivery of said deed to him as above provided, the said property conveyed thereby shall be free and clear from all incumbrance or lien incurred in any manner by them or through them or on their or either of their account, except that they shall not be required to pay any assessment or taxes levied upon or against the property conveyed by said deed since the year 1891.

In witness whereof, the said Lawler and Wells and the said Cowland have hereunto set their hands and seals, this twelfth day of May, 1892.

JOHN LAWLER. [SEAL.]
E. W. WELLS. [SEAL.]

(Endorsed :) No. — Term No. 2365. District court. Territory of Arizona, fourth district. Clinton B. Wiser, *et al. vs.* John Lawler, *et al.* Complaint. Filed March 9th, 1895 at 2.15 o'clock p. m. A. J. Herndon clerk. By Wm. Wilkerson, deputy. G. W. & J. T. Kretzinger, Johnston and Sloan, att'ys for plaintiffs.

69 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

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| CLINTON B. WISER and C. N. FIELD, Plaintiffs, *vs.* JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD MINING COMPANY, THE INDUSTRIAL MINING AND GUARANTEE COMPANY, and JOHN GRIFFIN, Defendants. | Separate Answer of Lawler and Wells. |

Defendants, John Lawler and Ed. W. Wells, solely for themselves, and not for any of their codefendants, come now and demur generally, to plaintiffs' complaint herein, and say the same does not state facts sufficient to constitute a cause of action against these defendants, or either of them.

Specially demurring to said complaint, said defendants Lawler and Wells, say, that said plaintiffs have shown no capacity in themselves to maintain this suit.

Second. They have shown no legal standing in this court.

Wherefore, the defendants, Lawler and Wells, pray the judgment of this court as to the sufficiency of said complaint.

—— —— AND
—— ——,

*Attorneys for Defendants Lawler and Wells.*

Further answering, defendants, Lawler and Wells, admit,
70 the residence of plaintiffs and of themselves, as alleged in complaint.

Admit, that on and before May 12th, 1892, they were the owners by patent from the United States, and in possession and operation of, "Hill Side," "Seven Stars," "Happy Jack," "Contact # 1," "Contact # 2," and "Camp," as alleged in plaintiffs' complaint.

Admit, that on and before said date, defendants, Lawler and Wells, were in possession, as locators and as grantees, of the locators of the following mining claims, to wit: "Mid-night," "Water Fall," "Morning Glory," "Water," "Hidden Treasure," "Sucker," "Side," "Purple Rose," "Southern Belle," "Lucky Cuss," "Robert E. Lee," "Centipede," and "Good Enough," located on public lands of the United States, as alleged in plaintiffs' complaint.

Admit, that on and before May 12th, 1892, defendants, Lawler and Wells, held out and represented that a large amount of development work had been done on said mining property; and a large amount of valuable ore had been taken therefrom; and that a quartz mill had been constructed thereon and equipped for operation; and that the mines were otherwise developed and supplied with implements and appliances for working, as alleged in plaintiffs' complaint.

Deny, that on the 12th day of May, 1892, or at any other time,
71 or at all, defendants, Lawler and Wells, and said Wells' wife, or either, or any of them, sold or transferred, or assigned, to Charles Cowland, of the city of Denver, Colorado, or to

any other person whomsoever, by duly executed instrument in writing, or otherwise, said groups of mines, with their improvements and appurtenances, including any lodes or veins, or any part or portion thereof, or any mines at all, or any buildings or appliances whatever belonging to, or appurtenant to said mines, for the sum of four hundred and fifty thousand ($450,000) dollars, cash, or for any other sum or consideration whatever, or at all.

Deny, the execution of the deed used as Exhibit "A" in plaintiffs' said complaint, and

Deny, the execution and delivery of any deed or deeds, or instrument in writing whatever, purporting to convey said group of mines or any part thereof, from said Lawler and Wells, to said Cowland or any other person whomsoever.

But, on the contrary, defendants allege the facts to be as follows:

That the said John Lawler and Ed. W. Wells, were, on the 12th day of May, 1892, and prior thereto, the owners in possession and operation of, the groups of mines described in said plaintiffs' complaint, and of the personal property therein described; and on that day, to wit, May 12th, 1892, they entered into a contract in writing, called an escrow agreement, with one Charles Cowland, of the city of Denver, Colorado, for the sale of said groups of mines and
72 said personal property for the agreed consideration and purchase price of four hundred and fifty thousand ($450,000) dollars, subject to the express conditions, reservations and stipulations, therein made, to be paid to them as specified and set forth in said escrow agreement, a copy of which is herewith filed marked Exhibit "A," and prayed to be read as part of this answer.

That by the terms of said escrow agreement and understanding, a deed was made, signed and acknowledged, and it was agreed to be placed and was placed, with the Bank of Arizona, as the escrow agent, selected and agreed upon by both parties, to hold said agreement and deed in escrow, to be delivered to the said Cowland only upon the full, final and complete performance of all the stipulations and agreements on his part covenanted to be performed, as set forth in said escrow agreement, and not otherwise.

That upon the signing and ensealing of said instrument, said escrow agreement and said deed, and the same being placed in the hands of said agent, as per the agreement between the parties thereto, the said Cowland did pay to the said Lawler and Wells, as part of the purchase price of said mines, the sum of twenty thousand ($20,000) dollars, and no more.

As to that allegation in plaintiffs' complaint, wherein they state, that "said Cowland engaged with one H. H. Warner, one of the stockholders herein, to vest the title to said mining property in the Industrial Mining and Guarantee Company," for the purpose
73 of enabling said Cowland and Warner to put on foot and incorporate a company, to be known as the "Seven Stars Gold Mining Company," called the gold company, which should, after its organization, receive a further deed from said guarantee company to the mining property before described, these defendants have no

knowledge or information upon which to base a belief, and therefore deny the same.

As to the allegation in plaintiffs' complaint, that pursuant to this arrangement and for the purpose of carrying the same into effect, said Cowland did, on the 15th day of June, 1892, execute and acknowledge his deed of conveyance to said Industrial Mining and Guarantee Company, defendants say, they have no knowledge or information upon which to base a belief, and therefore deny the same.

And in connection herewith, they aver the fact to be, that the said Cowland did not convey title to said mining properties, or any part thereof, with the improvement thereon, or otherwise, because, the said Cowland had no title to said property or any part thereof, or any power or authority from these defendants or any one else to convey said mines by deed or otherwise.

As to the execution of any such deed or instrument, as plaintiffs' Exhibit "B," defendants have no knowledge or information upon which to base a belief, and therefore deny that the same was ever executed.

74 Defendants admit, upon information and belief, that said gold company was incorporated and organized under the laws of the State of New Jersey; but as to the time of its incorporation, defendants are not informed.

As to the allegation in plaintiffs' complaint that on the 10th day of September, 1892, at a meeting of the board of directors of the said guarantee company, a resolution was adopted, directing a conveyance of the Seven Stars mining property and other property in that resolution enumerated, to the gold company, upon the company showing that it had placed two hundred thousand ($200,000) dollars for working capital in its treasury, and upon said guarantee company receiving from said gold company two million eight hundred thousand ($2,800,000) dollars in cash, or in stock of said gold company, as per Plaintiffs' Exhibit "B," the said defendants have no knowledge or information sufficient to form a belief, and therefore deny the same.

As to the allegation, that in pursuance of a resolution, there were two million, eight hundred thousand ($2,800,000) dollars of the capital stock of the gold company issued and placed upon the market for sale, and a large amount of said stock, amounting in the aggregate to a sum much greater that two hundred thousand ($200,000) dollars, in face value thereof, was sold, said defendants have no knowledge or information upon which to base a belief, and therefore deny the same.

Deny, that on or about the 24th day of September, 1892, or at any other time, or ever, or at all, the said Lawler, either for himself or as the representative of himself and his codefendant,

75 Wells, or any other person, aided or assisted by one H. H. Warner, president of the said gold company, or by any other person or persons whomsoever, or at all, in the city of New York, or elsewhere, prepared or caused to be issued, a prospectus, entitled or reciting:—

"Seven Stars Gold Mining Company, incorporated under the laws of the State of New Jersey. Fully paid and non-assessable. No individual liability whatever. Capital $3,000,000. Six hundred thousand shares $5.00 each. Of which two hundred thousand shares, 15 % guaranteed stock of $5.00 per share is now offered for public subscription, payable as follows:" or with any other title or recitation, or any prospectus of any kind, nature or description whatever.

Deny, that the condition of the title to said mines and mining property was then, or at any other time, as alleged in plaintiffs' complaint; but allege the fact to be, that the title to said mines and mining property then, and at all times theretofore, and has since been, in these defendants, as shown and fully set forth in this answer, and that if there ever was a prospectus issued, of the title or recitation alleged in plaintiffs' complaint, or at all, the same was issued without the knowledge, procurement, acquiescence, aid, consent or sanction of said defendants, Lawler and Wells, or either of them.

Deny, that a map or plat of said properties or town site adjacent to said properties, was prepared under the direction or supervision of said defendants, Lawler and Wells, or either of them, containing any statement whatever, and allege the fact to be, that if
76 there was ever prepared any such map or plat, as alleged in plaintiffs' complaint, or any at all, it was prepared without the knowledge, procurement, acquiescence, aid, consent or sanction of said defendants, Lawler and Wells, or either of them.

As to the allegation, that there was prepared a blank, subscription or application, for shares of stock in the said gold company, accompanying such prospectus, or any prospectus, either as part thereof or otherwise, as shown by Exhibit "C," in plaintiffs' complaint, or at all, defendants, Lawler and Wells, have no knowledge or information, sufficient to form a belief, and therefore deny the same, and

Deny, that such blank subscription or application for shares of stock, or any subscription or application, whatever, was prepared by these defendants or either of them, or with the knowledge, procurement, acquiescence, aid, consent, or sanction of said defendants, or either of them.

As to the allegation that many prospectuses, together with maps and applications for shares, were printed in New York city, and distributed by the secretary and treasurer of said gold company, in the city of New York, Chicago and other cities, for the purpose of selling the stock of said gold company, defendants have no knowledge or information sufficient to form a belief, and therefore deny the same, and allege that if such was done, it was without the knowledge, procurement, acquiescence, aid, consent, or sanction of
77 said defendants, or either of them.

Deny, that a large number of said copies of maps, prospectuses, or either of them, were delivered to or received by said defendants, Lawler and Wells, or either of them, or by the Bank of Arizona, and

Deny, that a large number or any number at all, were or was, distributed by said Lawler and Wells, or either of them, to various parties or any party at all, in the city of Prescott, or elsewhere, and

Deny, that said Bank of Arizona, either received or distributed any such maps, plats or blank subscriptions.

As to the allegation in plaintiffs' complaint, that the statements and representations made and contained in said prospectus, map and blank application, and the recitals and representations therein, that said stock was fully paid and non-assessable; that the property was rich and valuable; that the money was desired for working capital; that the property belonged to said company; caused plaintiffs to subscribe for 10,674 shares of the capital stock of said gold company, these defendants have no knowledge or information upon which to base a belief and therefore deny the same.

But state the fact to be, that said plaintiff, Wiser, at all the dates after the organization of said gold company, held himself out as such and was one of the directors of said company, and as
78 such was fully advised of all its affairs and of the true condition of the same, and could not be deceived and was not deceived by any prospectus, map, plat or blank application for subscription, or otherwise.

Deny, that before or at the date of plaintiffs' subscription to or payment for any shares of stock, or at any other time, or at all, the said gold company was in the actual open, public, notorious or undisputed possession of said mines or mining property, or any part thereof, except the qualified and limited possession hereinafter defined, and

Deny, that said company with the full knowledge and consent of said Lawler and Wells, or with any knowledge or consent of said Lawler and Wells, or either of them, or at all, worked said properties and received the proceeds derived from the ores taken therefrom, without protest or objection, or at all.

As to the allegation, that many other persons, citizens of the United States, relying solely upon the representations and recitals contained in said prospectus and upon said map and the possession and use of said mines by said company, purchased various shares of stock and paid therefor $5.00 per share, defendants have no knowledge or information sufficient to base a belief, and therefore deny the same.

As to the allegation that about the same time, to wit, September 27th, 1892, another prospectus was issued for the purpose of distribution in England and Scotland, defendants have no knowl-
79 edge or information upon which to base a belief, and therefore deny the same.

Deny, that such second prospectus or any prospectus, whatever, was prepared by said Lawler, defendant, while he was in New York, or at any other time or place, or at all.

Deny, that it was prepared by said Warner with the knowledge, procurement, acquiescence, aid, consent or sanction of said Lawler, representing himself and Wells, or at all; but on the contrary allege,

that if any such prospectus or any prospectus whatever, was issued, it was done without the knowledge, procurement, acquiescence, aid, consent or sanction of defendants, or either of them.

As to the allegation, that such prospectus, together with the map referred to and blank application for stock, in like form as the American prospectus, was circulated in the city of London, and other cities in England and Scotland, and that many persons, relying wholly upon the same, and upon the possession of the property by said company, were induced to purchase large numbers of the shares of stock of said company, defendants have no knowledge or information sufficient upon which to base a belief, and therefore deny the same.

As to whether or not, the money alleged by plaintiffs to have been paid for stock by American and English subscribers, was received by the treasurer of said gold company, defendants aver that they have no knowledge or information thereof, sufficient to form a belief, and therefore deny it.

80 Deny, that about the 17th of August, 1892, or at any other time, or at all, they delivered the absolute possession and control or any possession or control of said mines and mining property, or improvements thereon, or any part thereof, or the personal property thereon situated, to the said gold company, or any other person whomsoever, except as herein stated.

Deny, that the said gold company made sales of the ore extracted from said mines, and disbursed the proceeds thereof as its own, or handled same in any other manner, than as belonging to these defendants.

Admit, that certain attachment suits were instituted in the courts of the Territory of Arizona, and writs issued and levied on account of the overdue and unpaid debts, obligations and contracts of said gold company.

Deny, that said suits or any suits were settled or disposed of in the name of the said company, or at all, but allege the fact to be, that on account of the default in the payment of said debts, obligations and contracts of said gold company and its default and failure to properly defend said suits, defendants did intervene to protect their interest and rights, and that said suits are still pending in the district court of the fourth judicial district of the Territory of Arizona in the county where said property is situated upon issues framed between

81 said attaching plaintiffs and these defendants, as intervenors and claimants of the property seized under said writs of attachment, and that they have at all times and on all occasions asserted their right and interest as herein set forth in and to said property, and every part thereof, and

Deny, that they have ever stood passive or silent or allowed any other person to claim or attempt to claim said or any portion of said property without asserting, declaring and claiming their rights and interests therein, as herein set forth.

As to whether said gold company received and realized from sale of stock to American subscribers, $149,686.14, or any other sum, de-

fendants have no sufficient knowledge or information to form a belief, and therefore deny it.

As to whether or not there was realized from sale of stock to English subscribers, and placed in treasury of said company, $92,500.00, defendants do not know and aver that they have not sufficient knowledge or information upon which to form a belief thereon, and therefore they deny it.

As to whether or not the said company realized from sale of regular stock of said company, $2,018.80, defendants have not sufficient knowledge or information on which to form a belief, and therefore deny it.

82 Defendants admit, that during the operation of said mines by said gold company, there was taken therefrom the sum of $75,607.42, or thereabouts, but state in connection herewith, that the same was so taken as the property of said defendants, and placed in bank to their credit, on the agreement and understanding that the same should go, and be placed as a credit upon the purchase price of said mines, as per the escrow agreement, and contract of said Cowland herein stated and referred to.

Defendants admit, that there was paid on the purchase price of said mines, $217,584.55 or thereabouts, but that it was by the said guarantee company, defendants deny, and in this connection defendants aver, that the said payments were made by, for, and on behalf of, the said Cowland as part of the purchase price of said mines, in accordance with, and subject to the terms of the said escrow agreement and contract, herein stated and referred to.

As to whether or not said gold company expended $120,586.90 as expenses in the operation of, and work on said mines, defendants have not sufficient knowledge or information on which to form a belief, and therefore deny it.

As to whether or not, said gold company expended $29,576.45 "for subdry expenses, prospectuses &c.," and $15,194.20 "as dividends to American subscribers," and $6,937.50 "to English subscribers" as alleged by plaintiffs, defendants aver that they have not sufficient knowledge or information thereof on which to form a belief, and therefore deny the same.

83 They deny emphatically, that of such, they had full knowledge and notice, or any knowledge or notice at all; but aver, that if any such expenditures were made, the same was done without the knowledge, procurement, acquiescence, aid, consent or sanction of these defendants.

Deny, that said disbursements or any such disbursements, were made through the Bank of Arizona, at Prescott, Arizona.

Deny, that they had access to any new set of books, opened up in the name of said gold company, in which any such receipts and disbursements were kept.

Deny, that on or about the 4th day of May, 1893, or at any other time, said defendants, Lawler and Wells, subscribed for 50,000 shares of the capital stock of said company.

But, state, the fact to be, that on the 12th day of May, 1893, according to the contract hereinbefore referred to, between the said

defendants and Charles Cowland, there was to be paid by the said Cowland to said defendants on the purchase price for the said mines and mining property above described, the sum of $125,000 and instead of making that payment according to said agreement and contract, negotiations were entered into and opened up by the said Cowland with the said defendants and a supplemental agreement was entered into on or about the 13th day of May, 1893, changing and modifying the said original agreement to the effect that the payment mentioned in said agreement to be made on the 12th
84 day of May, 1893, was to be made by the said Cowland as follows:—

$9,098.00 in cash, which was then deposited to said Lawler and Wells at the Bank of Arizona;

$4,500.00 in cash to said Lawler and Wells at said bank on the first day of June, 1893, and a like sum on the first day of each of the following months, July, August, September, October, and November, in the year, 1893, and the further sum of $100,000 and the interest on the three payments in said escrow agreement mentioned, remaining due and unpaid on the 12th of November, 1893, and also modifying said escrow agreement to the effect that the 4th payment mentioned therein of $125,000 to be made on the 12th day of November, 1893, was to be made in three equal payments, two months apart next after and following the 12th day of November, 1893, and to the further effect, that the extension of time in which to make said third and fourth payments in said original agreement, was granted in consideration of the payment and delivery to said Lawler and Wells of $50,000 of the guaranteed capital stock of the Seven Stars Gold Mining Company and other valuable consideration and by that supplemental agreement, it was understood and agreed that the terms or condition of the said escrow agreement were to remain unchanged and to be not modified in any particular, save in the time of making the third and fourth payments therein mentioned, as above stated.

And to the further effect, that in default of delivery
85 and payment of said stock as aforesaid, or in default of making either or any part of either of the payments in said supplemental agreement, provided the said Lawler and Wells, were to have and exercise the same rights and privilege- in every particular, that they had in the original escrow agreement; the same as if said extention of time had not been granted, and in case of default in any of the terms thereof, all sums of money theretofore paid to said Lawler and Wells in accordance with the terms of the original escrow agreement or the supplemental agreement, should be their property, and held by them and forfeited by said Cowland or by the party paying the same, as liquidated damages for the failure of said Cowland to carry out the conditions agreed to, and

To the further effect that all the ores mined or taken from the property mentioned in said escrow agreement and the proceeds thereof, should continue to belong to said Lawler and Wells, and that the proceeds should be applied to the payment of the amounts provided in said supplemental agreement.

And further say, that said plaintiffs and the defendants, Seven Stars Gold Mining Company and The Industrial Mining and Guarantee Company, and all and every person interested in this litigation, were and each of them was, fully and completely advised at the time and before the time, said supplemental agreement was entered into by said defendants, Lawler and Wells, and by
86 and on behalf of said Cowland, and were fully apprised and aware of the facts and conditions in the said agreement contained, and they and each of them did, individually, and by their duly elected and qualified boards of officers and representatives, encourage, aid, assist and agree to said supplemental agreement, extending the time of said payments and to every part thereof and at the time of, and thereafter at all times, did abide by, acquiesce in, consent to, ratify and confirm its execution, and all and every act done by said defendants and all other persons in accordance with said agreement.

As to the allegation, that on the 8th day of May, 1893, said Lawler was duly elected as one of the directors of said gold company, defendants say, they never had any notice, knowledge or information thereof and that they have not now any knowledge or information upon which to base a belief, and therefore deny the same.

Admit, that on or about the 4th day of May, 1893, the said Lawler was appointed superintendent or manager for said gold company, and that he represented the said gold company's interest; until on or about the 5th day of September, 1893;

But state the fact to be, that said appointment, employment and representation were subordinate, subsequent and subject to the superior right and legal possession of the said Lawler and Wells, of, in and to said mines and mining property described in said
87 deed, according to and as provided by the terms and conditions of the said escrow agreement made and entered into on the 12th day of May, 1892, between said Cowland and defendants, Lawler and Wells.

Deny, that on the 20th day of September, 1893, or at any other time, or at all, said Lawler and Wells, while said Lawler was in possession for said gold company or at all, wrongfully or fraudulently assumed or asserted possession to said mines and mining property or any part thereof, or to any part of the personal property thereto belonging, but in this relation, aver the facts to be, that said Cowland and all and every person in line with his interest in and to said escrow agreement of May 12th, 1892, and said supplemental agreement of May 13th, 1893, and in violation, breach and default of said agreements, and the conditions thereof, failed, neglected, refused and defaulted in the payments to be made as therein provided to be made on the first day of September, 1893, and that on account of said failure, default and neglect to make payments and perform the conditions, according to the provisions, stipulations and terms of said agreements, in such case, made and provided, and in order to protect their own interest and rights in the premises, they did upon the forfeiture above mentioned, and upon the failure of the said Cowland and every and all persons on his behalf or in line with his interest, to perform the conditions and make the payments provided

in said agreement and the supplement thereto, rightfully, and
88 in accordance with the terms and provisions of said agreements, maintain, as they had hitherto done, their legal and rightful possession of said property, and did further thereupon declare and assert the forfeiture against said Cowland and all persons claiming under him and did rightfully and properly, upon such forfeiture, claim and assert their right to exclude said Cowland and all persons claiming under him or in line with his interest, from any possession, operation or occupancy of said property.

And allege that said Lawler was only representing said company to a limited and special extent, subject to the said superior, recognized legal possession and rights of these defendants.

And further assert, that they are the owners of said mines and mining properties and that said Cowland, nor any other person whomsoever, has any title to said property or right to the possession thereof, or any interest whatever therein.

Admit, that they gave out and pretended that they had not been paid the purchase price for the said mines and mining properties by the said Cowland or any one on his behalf, and here assert that to be the fact.

Deny, that the claims made by said defendants as herein set forth, or as alleged in plaintiffs' complaint, were made or asserted under or by virtue of any secret agreement of any character, and,

89 Deny, that they ever entered into any secret agreement with said Cowland or any other person with reference to said property or any deed whatever, but allege the fact to be, that the agreement under which defendants asserted and do now assert their rights, was made, executed and placed in the hands of the Bank of Arizona, as the escrow agent for the respective parties thereto, to wit, said Cowland and these defendants, on the 12th day of May, 1892.

Deny, that a duplicate of the deed mentioned in plaintiffs' complaint or of any deed, was attached to said agreement; but allege the fact to be that the only deed ever signed by these defendants, or ever intended to be operative upon any event, or contingency, was signed and attached to said escrow agreement and placed in the hands of the Bank of Arizona as escrow agent and that said deed was only to be delivered or become in any manner operative or to have any force or effect, whatever, solely upon the condition that said Cowland was to perform or cause to be performed each, every and all of the covenants, stipulations and agreements mentioned and provided in said escrow agreement.

Deny, that said defendants, Lawler and Wells, had full notice or any notice or knowledge of the possession of said properties by said gold company, except as herein set forth and as in said escrow agreement provided.

Deny, that they had full notice or any notice whatever,
90 or personal knowledge, or any knowledge whatever, that said gold company was holding out to the public or to would-be purchasers of its stock, or to any person or persons whomsoever, that it held full title to said property or any title at all, or that it held

out to any person, that it had a right to possession, except such limited and qualified possession as herein set forth and in said escrow agreement provided, or that it ever claimed or asserted or held out, that it had title or right of possession or any interest whatever, or claim by virtue of an absolute deed or any deed, or otherwise from said Lawler and Wells to said Cowland or any person whomsoever, or by virtue of any covenants or agreements, or at all.

Deny, that said company had such title or any title by deed or conveyance of any nature whatever or authority to hold out or represent to any person or persons whomsoever that it had any title or right to the possession of said property other than as provided in said escrow agreement.

Deny, that defendants had any knowledge, personal or otherwise, that said gold company was offering for sale to plaintiffs or any other persons, its stock, or that the same had no value or that the value was represented in and by a full and sufficient title to said mines and mining properties.

Deny, that such was the fact or that it had such title or any title at all, to said properties.

91 Deny, that said defendants had personal notice or any notice whatever, or knowledge that said gold company was receiving or using the money derived from the sale of its capital stock to plaintiffs or any other person or persons whomsoever, in the development, working and mining the properties aforesaid and

Deny, that they had full notice or any notice whatever, or personal knowledge or any knowledge whatever, that it was represented by any prospectus or other advertising matter or any representations made by said gold company, or other persons, that the proceeds derived from the sale of stock was to be used about the improvement and further development and working of the property, and

Deny, that it was not given out to plaintiffs and others in like estate, and to all the stockholders of said gold company, both at the time and before they became stockholders, that a part of the purchase price remained due and unpaid to said defendants, and

Deny, any notice or knowledge of anything to the contrary.

Deny, that they, or either of them, had notice or knowledge of any kind whatever, that the purchasers of stock were not informed that any portion of the money paid therefor would be turned over to these defendants toward the payment of the purchase price of said property, and

92 Deny, that such was the fact, but defendants aver that they are informed and believe that plaintiffs and all persons in like estate had full notice and knowledge that the full amount of the purchase price had not been paid by Cowland or any person in his behalf to these defendants, and that the title to said property never passed from these defendants and that it was agreed that it should not pass, save and except upon the full and final performance of each, every and all the conditions of the agreements hereinbefore referred to.

Deny, that said defendants had full notice, or any notice whatever, or knowledge of the possession of said mines and properties by the said gold company save and except as hereinbefore stated, and

Deny, that they ever had any other possession than as herein stated.

Deny, that they had full notice or any notice, or personal knowledge or any knowledge, that large sums of money or any sums of money derived from the sale of stock to plaintiffs or any persons, *was* being put into or used in or about the conduct of said mines.

Admit, that the books and accounts kept of and touching the business of said gold company while it was connected with said property, were kept in its name and that while said Lawler was acting in the capacity of superintendent, subject to the conditions hereinbefore mentioned, the entries of the transactions of the business of said gold company so conducted were made in
93 the name of said company under his direction, and

Admit, that he conducted said company's business according to the agreement and understanding between defendants and said company, but

Deny, that he conducted said business as if said defendants had no claim in law or equity in or to said mines or mining property, but allege the fact to be, as hereinbefore stated, that said business of said company so conducted by Lawler as its representative, was according to their agreement, understanding and arrangement, subordinate, subsequent and subject to the superior possession rights, title and interest of defendants as hereinbefore set forth.

Admit, that they had full notice and knowledge of certain suits being brought against said gold company and attachments being issued therein and levied upon certain property as the properties of said gold company, but

Deny, that defendants stood by with such notice and did not protest or intervene to claim the property, their property, but allege the fact to be, that upon the institution of such suits, these defendants did immediately intervene, protest and claim the properties above described, as their property, and did assert their interest thereto, and claim the same and every part thereof, and that said suits are now pending in the district court of Yavapai county, Arizona Territory, between said attaching plaintiffs and these defendants, as intervenors.

94 And said defendants further aver, that said gold company failed, neglected and refused to properly defend said suits or pay the claims demanded, but defaulted and suffered said plaintiffs to claim the property and sacrifice the same for the payment of said claims.

Deny, that during the transactions or any of them, mentioned by plaintiffs, said defendants, Lawler and Wells, stood silent or encouraged or participated in encouraging the public including plaintiffs or the public or plaintiffs, or any other person whomsoever, to give credit to said gold company either as the actual *bona fide* owner of said mines and mining property, or at all.

Deny, that they did not assert and give out, that they were the owners of said mines and mining properties during all the transactions alleged in said plaintiffs' complaint, but aver the fact to be, that they, at all times, and at all places, held, gave out, and claimed their rights in and to said properties as hereinbefore set forth, and that the consideration or full purchase price had not been paid to them, and that they at all proper times, declared their right under and by virtue of said escrow agreement to terminate the qualified possession of said Cowland and his assigns as hereinbefore set forth and to determine all claim on his part or part of his assigns, to the properties above described, as provided by said escrow agreement.

95 Deny, the acts and doings alleged by plaintiffs against defendants singularly and in toto as aforesaid, and

Deny, full notice or any notice or personal knowledge, or any knowledge, of the transactions, singularly and in toto as aforesaid.

Deny, that said Lawler, by subscribing for 50,000 shares of stock of said gold company, or any other number of shares, or any other matter, or by any other means, did unite with said gold company or give out, or represent to the public, including plaintiffs, or any other person whomsoever or knowingly or passively or at all, permit said gold company to hold out or give out, that it was fully entitled or entitled at all, to a full right or title or any right or title, in and to said mining properties, or to issue stock thereon to the full value thereof, or of any value or sell the same to plaintiffs or any other person whomsoever.

Deny, that they subscribed for any stock, except as hereinbefore set out.

Deny, that they are estopped by such acts or any acts from asserting their title to said mines or mining property or from disputing the alleged claim of title thereto by said gold company or from disputing its right to have or hold full possession or any possession or operate, or conduct, or develope, or work, or mine, the properties, or receive the proceeds in whole or in any part thereof for the benefit of its stockholders, creditors or any person or persons whomsoever.

96 Deny, that they are estopped to assert their own right of possession as hereinbefore set forth in and to said mining properties, or that they are estopped to collect against the same or against the said gold company, the purchase price, and

Deny, that they are estopped to assert their right to the full contract or purchase price of said mines as the sellers thereof.

Deny, that they are in any manner estopped from -forcing their claim against said mining properties and any part thereof and all persons interested or claiming any interest therein, and

Deny, the materiality, relevancy or pertinence of all such allegations and affirm that they are mere, irrelevant, unnecessary, improper and immaterial allegations and charges of incorrect conclusions of law and justly require no answer or reference, but for the purpose of accuracy, defendants have denied the same and do deny the same severally and in toto.

And for the same reason and upon the same grounds, defendants deny that they had full knowledge or any knowledge with respect to said transactions as they are alleged to have occurred or otherwise or at all, and

Deny, that they have no right in equity or in law to receive the purchase price of and for said mines and mining properties from whatever source obtained.

Deny, that their receipt or retention thereof will operate a
97 fraud or injury to plaintiffs or any other person or persons whomsoever to the extent of the full amount of such receipts or in any amount whatever.

Deny, that they had not the right to receive the proceeds from the operation of said mines and mining properties and apply the same on the purchase price, and

Deny, that they are, by receiving the same, estopped in any manner thereby or by any other means or reason, from asserting their rights and title to said premises and property or that said gold company is entitled to recover from these defendants for the benefit and interest of the plaintiffs or for any other benefit, interest, reason or purpose, whatever.

Deny, that defendants' acts and doings, or that their acts or doings in any manner whatever or upon any matter, subject or thing, did ever in any way, or to any extent whatever, hinder or prevent said gold company from working or operating said mines or mining properties, according to their right under the contract heretofore mentioned, or at all.

Deny, that any act or acts of defendants has or have resulted in great damage or any damage to said gold company or to plaintiffs or any other person whomsoever.

Deny, that they did unlawfully or wrongfully, seize the mining properties aforesaid or seize them at all, or that they did in any other manner or at all, greatly embarrass, or to any extent whatever embarrass said gold company financially or otherwise or cause it to become insolvent.

98 Deny, that any receiver of said gold company has ever been prevented from taking possession of said mines and mining properties, as such receiver, or at all, by reason of any act or doings of said defendants or either of them.

As to the allegation that plaintiffs hold in their own right, severally, shares of stock of said gold company, amounting to $53,000, defendants have no knowledge or information upon which to base a belief, and therefore deny the same.

Deny, that plaintiffs have exhausted their remedies or demanded of the stockholders or directors of said gold company, as such, or at all to bring or cause suit to be brought in the name of the said company, or exhausted their remedy or made proper demand or made any demand upon receiver of said company to bring said suit and deny that said suit or any suit should have or can properly be brought or maintained by the stockholders.

Deny, each, every, all and singular, the allegations in this complaint not heretofore expressly admitted or denied.

Further answering, said defendants allege, that said plaintiffs and all persons in like estate, and their codefendants, the guarantee and gold companies, had, at the date and time of each every and all the transactions alleged in plaintiffs' complaint, notice of the condition of the title to said mines and mining properties described in said complaint, as the same is in this answer set forth, and

99 that any and all dealings contracts or transactions had by plaintiffs, or any persons in like estate, and their codefendants said gold and guarantee companies, in any manner concerning said propertes, was and were, had and done, with notice of the title and interest of these defendants, and of all the claims concerning said property by, or on the part of any and all with whom they had such dealings, contracts or transactions.

Wherefore, defendants pray that plaintiffs take nothing by this action, and for costs and such other general and equitable relief, as to the court may seem meet and proper.

J. F. WILSON &
HERNDON & NORRIS,
*Attorneys for Defendants Lawler and Wells.*

100 Defendants further answering:

By way of cross-bill and cross-complaint herein, complain of the plaintiffs Clinton B. Wiser and C. M. Field and all whom they represent, the Seven Stars Gold Mining Co. and the Industrial Mining and Guarantee Company and John Griffin, and allege:

That the residence and citizenship of all the parties in this action are as alleged by plaintiffs in their complaint.

That on the 12th day of May 1892 defendants Lawler & Wells were then owners and in possession of the said patented mines named in plaintiffs' complaint and defendants' answer and the interests described in said complaint and answer of the location rights.

That defendants had on said mines for the working and operating thereof, a quartz mill properly erected and operated by steam-power.

That they had in connection therewith teams and freight wagons tools supplies and other personal property in connection therewith for the operation of said mines the working and transportation of said ore, to the value viz: of $40,000.

That on said 12th day of May 1892 these defendants and plaintiffs in this cross-bill, with said Charles Cowland entered into a written contract for the sale of said mines, improvements and personal property therewith operated for the sum of $450,000.00 to be paid as follows.

101 $20,000 in cash and $80,000 in 30 days from said date with the proviso that that payment of $80,000 might be made by paying $30,000 at the end of 30 days and the other $50,000 in two payments $25,000.00 at the end of six months and $25,000 May 12th 1893, and interest at 10% *per cent.* from May 12 1892.

The second payment of $100,000 Nov. 12 1892.

The third payment $125,000 May 12 1893, and

The fourth payment 125,000 Nov. 12 1893.

That said contract was reduced to writing and signed by these defendants and said Cowland and was placed in escrow as hereinafter stated.

That at said time and in accordance with said agreement and contract for the sale of said mines and property, defendants made, signed and acknowledged their deed of conveyance in and to all of said mines and property aforedescribed to the said Cowland, and with said agreement and contract of sale, placed the same in the *the* Bank of Arizona at Prescott Arizona as the escrow agent of both parties in the transaction to be delivered to the said Cowland his successors or assigns on and only on the*m* payment of said instalments at the places and within the times named in said agreement.

By said contract it was expressly agreed by and between defendants and said Cowland that in case of the failure of said Cowland to make or cause to be made any of said payments at the time
102 or times and in the manner stated, that on the demand of defendants the said Bank of Arizona should deliver the said escrow agreement back to said defendants.

It was further expressly agreed that in event of the failure of said Cowland to make or cause to be made any or all of said payments as agreed, and within the time agreed, all payments of money theretofore made by said Cowland should be forfeited by him, and retained by these defendants as liquidated damages, accruing to them on account of and because of such failure, and that the defendants should be released and discharged from any obligation to convey said property by deed or otherwise; and in case of any such forfeitures on part of said Cowland as aforesaid it was expressly agreed that the rights of said Cowland to occupy and operate mines should at once cease and terminate.

It was also stipulated and agreed that said Cowland could occupy and operate said mines subject to the legal possession of defendants; and that all the proceeds of said mines should be the property of these defendants and placed to their credit, as part payment on said purchase price. All of which will more fully appear by reference to said escrow agreement a copy of which is marked Exhibit "A" in defendants' answer to plaintiffs' original complaint herein which it prays to be read as a part of this cross-bill.

Defendants aver that on the execution of said escrow agreement and said deed and placing the same in escrow as aforesaid
103 the said Cowland entered upon said mines and property and began the operation of the same and so continued to operate the same under the name of the Hillside Mining Company the name under which it was operated by said Lawler & Wells before said date, until about Sept. 1st 1892 and that thereafter the operation of said property was continued under the name of the Seven Stars Gold Mining Co. a corporation alleged by plaintiffs to be organized under the laws of New Jersey.

That during the operation of said mines and property as aforesaid by virtue of said escrow agreement, the balance of the first payment

$80,000 was paid by and on behalf of said Cowland. That the said second installment of $100,000 was about Nov. 12, 1892, also paid. That neither the third or fourth installments were paid nor was any part of either of them paid.

That about the time the said third installment of $125,000 became due, to wit: May 12th, 1893, the said Cowland applied to said defendants Lawler & Wells for an extension of time for the payment of said installments; and thereupon defendants entered into an agreement with said Cowland to so modify said escrow agreement only as to the time for the payment of said installments as follows: $9,098 in cash, $4,500 June 1st, 1893, $4,500 July 1st 1893, $4,500 August 1st 1893 and a like sum Sept. 1st, Oct. 1st, and Nov. 1st, 1893, and the balance of said third installment of $100,000 to be paid Nov.

104 12, 1893, and the fourth installment to be paid one-third in two months from said twelfth day of November 1893, and the balance & four & six months thereafter. And in said supplemental agreement it was expressly stipulated and agreed that on default of making either or any part of said payments as therein stated the said Lawler & Wells should have and exercise the same rights and privileges in every particular which they then had under said escrow agreement aforesaid; and that all payments that might be made by virtue of said supplemental agreement should be and become the property of said defendants as liquidated damages upon such default or failure; and all conditions as to property and possession named in said original agreement were to remain in full force and virtue. A copy of said supplemental agreement is hereto attached marked Exhibit "B" and asked to be taken as part of this cross-bill.

And thereafter the said Cowland paid or caused to be paid under said supplemental agreement in the year 1893, June 1, $4,500 July first $4,500 August first $4,500 but that all payments and parts of payments and all of the same which became due Sept. 1, 1893, and at all dates thereafter, the said Cowland and all others acting for him or under his instructions or by the authority of said contracts or either of them or in any other manner whatever wholly failed and refused to pay and made default in said payments each and all of them.

That the payment of $4,500 as provided by said supple-

105 mental contract to be made on Sept. 1st, 1893, was not paid as provided, nor at all, but the said Cowland and any and all persons on his behalf failed, neglected and defaulted in making such payment and every part thereof. And on account of said failure, neglect and default these defendants continued to maintain and hold legal possession of said property, and did in addition, declare the forfeiture as provided by said escrow agreement and supplement thereto, and assert their right to terminate said occupancy on part of said Cowland and all persons interested with him or in his behalf, and did terminate such occupancy and cause them to desist therefrom and from in any manner interfering with said property or any part thereof.

That since said default in order to maintain said property from deterioration, serious damage and destruction and in order to pre-

vent portions thereof from being sold to satisfy the unpaid debts of said Cowland or those in interest with him, these defendants have been and were compelled to lay out and expend large sums of money, viz. $10,000 to preserve said property intact and to keep the same in repair for continued operation as a workable mine.

That the balance due on said contract price for said mines and property aforesaid including interest, defaults in the payment of which were made as aforesaid is the sum of $290,000.00.

106 That said Cowland disposed of and converted to his own use personal property of these defendants turned over to him under said agreement of the value viz: of $40,00–.

But the defendants here aver and give the court to know that, notwithstanding the said mines and property are the absolute property of these defendants; and notwithstanding the trouble and expensive litigation into which defendants have been thrown on account of the said failures, still, that equity may be done, defendants bring their said deed of conveyance in and to all of said mines and property heretofore described, duly executed to the said Cowland and tender the same in court and offer to deliver the same together with the possession of all said property and mine and improvements thereon, on the conditions that plaintiffs or either of them or any person or persons for them shall pay into this court for these defendants the sum of $290,000 and $10,000. And if said amounts aggregating the sum of three hundred thousand dollars shall be paid to these defendants or paid into court for them on day certain to be fixed by this honorable court then these defendants will deliver said deed and said property and mines and improvements thereon to plaintiffs or said Seven Stars Gold Mining Co. or to such party or parties as the court may designate and determine as being entitled to receive same under said Cowland contract.

Wherefore these defendants pray the judgment of the
107 court that plaintiffs and those in like estate with them and all persons having or claiming any interest in said property and premises under and by virtue of said Cowland contract, or some of them be required to pay within a reasonable time to be fixed by the court, the said sum of $290,000 the balance of said purchase price and the further sum of $10,000 expended by these defendants as aforesaid and in the event of their failure so to do that they be forever, stopped, barred, restrained from asserting or claiming any right title or interest either in law or in equity in or to said property and premises or any part thereof, and that the title to the same be decreed to be in these defendants and forever quieted and for all general relief to which defendants may be entitled under the laws of equity and for costs of suit.

J. F. WILSON &
HERNDON & NORRIS,
*Att'ys for Def'ts Lawler & Wells.*

108 TERRITORY OF ARIZONA, } ss:
*County of Yavapai,* }

John Lawler and Ed W. Wells, the above-named defendants, being duly sworn, each for himself, says, that he has read the foregoing answer and cross-complaint, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true.

JOHN LAWLER.
ED. W. WELLS.

Subscribed and sworn to before me this 13th day of April, A. D., 1895.

T. G. NORRIS,
*Notary Public.*

[SEAL.]

109 EXHIBIT "A."

The annexed deed from John Lawler and Ed W. Wells, to Charles Cowland dated May 12, 1892, conveying the Hillside group of mining claims, being all the mining property known as the "Hillside group," situated in Eureka mining district, Yavapai county, Arizona Territory, is deposited in escrow with the Bank of Arizona at Prescott Ariz., and is to be held and delivered by said bank upon the following conditions and those only:

The said bank is hereby directed to deliver the said deed to said Cowland, his heirs or assigns upon his or their paying or causing to be paid into said bank and the Park National Bank of New York City and the Bank of California at San Francisco, as hereinafter provided for, the full sum of four hundred and fifty thousand dollars ($450,000) as follows:

Twenty thousand dollars ($20,000) to be paid this day by checks for said amount on Denver Colorado, signed by H. H. Warner, divided as follows: Ten thousand dollars to said Wells and ten thousand dollars to said Lawler;

In thirty days from this date, eighty thousand dollars in cash, with this proviso, however: That said Cowland may, of this $80,000 to be paid within thirty days of the date hereof pay thirty thousand dollars thereof on said date, and twenty-five thousand dollars on or

before six months from this date; that is, the said twenty-five
110 thousand dollars shall be paid at the same time as hereinafter provided for the second payment of said purchase price; and the balance thereof, to wit, twenty-five thousand dollars shall be paid on or before the twelfth day of May 1893, that is to say the said twenty-five thousand dollars, being the balance of the first payment may be made at the time the third payment of the purchase price hereinafter provided for; it being agreed and understood however that each of said payments of twenty-five thousand dollars, which are a part of the first payment under this contract, but by a special arrangement, carried over to the second and third pay-

ments, shall bear interest at the rate of ten per centum per annum from this date hereof:

The second payment to wit, a hundred thousand dollars, in addition to the twenty-five thousand dollars aforesaid, shall be made on the twelfth day of November, 1892:

The third payment, to wit, the sum of one hundred and twenty-five thousand dollars in addition to the second twenty-five thousand dollars as aforesaid, shall be made on or before the twelfth day of May, 1893; and

The fourth payment, to wit, one hundred and twenty-five thousand dollars (which payments aggregate four hundred and fifty thousand dollars, said purchase price), shall be made on or before the twelfth day of November, 1893.

It being hereby mutually agreed that each and all of said payments shall bear interest from the date hereof until paid at the
111 rate of ten per centum per annum.

It is further agreed and understood that the aforesaid payments shall be made, if not otherwise agreed upon, as follows:

One-third thereof at the Bank of Arizona, at Prescott Ariz. for the credit of said Lawler & Wells.

One-third thereof at the Park national bank at New York city; and

One-third thereof at the Bank of California, at San Francisco.

The amounts paid in said Park national bank and Bank of California are to be credited to the Bank of Arizona, which said Bank of Arizona is to credit the same to the account of said Lawler and Wells under this contract.

That the said Cowland has the right to make any or all of said payments before the same are due, as hereinafter specified, and from the date he deposits with any of said banks, any part of said purchase price under this contract, interest on the amount so deposited shall cease from that date.

In case of the failure of said Cowland to make or cause to be made, any of said payments of money at the time or times and in the manner herein stated, full and complete, then the said Bank of Arizona upon demand thereof being made by said Lawler and Wells or their representatives, shall, and it is hereby directed
112 to deliver said deed to said Lawler and Wells or their representatives; and in the event of such failure of said Cowland to make or cause to be made any or all of said payments as above stated, then all payments of money theretofore made by said Cowland on the purchase price of said property shall be forfeited by him, and he hereby agrees and covenants to and with said Lawler & Wells that all money theretofore paid by him as purchase price of said *money of said* property shall belong to them and shall be retained by them as liquidated damages accruing to them for the failure of said Cowland to purchase take and pay for said property as herein stated and stipulated. And the said Lawler and Wells shall be at once released and discharged from any further duty or obligation to sell and convey the property mentioned in and described by said deed.

It is further agreed that said Cowland by himself and his agents, may at once enter into and upon said property mentioned and described in said deed and take possession thereof, subject however to the legal possession of said Lawler and Wells, and the said Cowland may use, possess, explore, develop, work and operate the same, and all the proceeds derived from such use, development, operating and working of the same, and from the ores taken therefrom shall at once be paid to said Lawler and Wells, and be applied to and credited upon the payments hereinabove stipulated to be made by said Cowland; they, said Lawler and Wells to notify the said
113 Bank of Arizona of such payments, and such payments to have the same effect as if deposited with said bank and to be part of the purchase price of said property. And on any amounts so paid, interest thereon shall cease from the date of such payment.

It is further agreed that said Lawler and Wells shall retain and remain in possession of said property described in said deed, until the full payment of the purchase price and interest as above stated shall be made, and said Cowland hereby recognizes and agrees to such possession and any and all use made of said property or any part thereof by or on the part of said Cowland shall be considered as a recognition of said Lawler and Wells' possession as aforesaid, but said Lawler and Wells shall not work the property or operate the said mines, nor shall they work or use the said personal property, nor shall they interfere with the use, working and operation thereof by the said Cowland.

It is further agreed that if the said Cowland shall fail to make the payments as above stated, and shall fail to take and pay for said property as above stated, that all improvements made upon said property, and all developments thereon and therein, and all ores taken therefrom, shall be the property of said Lawler and Wells and shall not be removed by said Cowland, and the cost and expense thereof shall in no manner be a charge against said Lawler and Wells, or against said property.

114 It is further agreed that said Cowland shall have the right to work and operate the mill and machinery and to use all the property, real and personal, mentioned and described in said deed during the continuance of this contract and until a forfeiture thereof on his part. And in case of a forfeiture of said contract on the part of said Cowland, by failure to comply with any of the provisions thereof or to make any payments as herein provided for, then he agrees to at once surrender and deliver possession of said property to the said Lawler and Wells.

The said Lawler and Wells hereby covenant, promise and agree to and with the said Cowland that when and at the time or the delivery of said deed to him as above provided, the said property conveyed thereby shall be free and clear from all incumbrance or lien incurred in any manner by them or through them or on their or either of their account, except that they shall not be required to pay any assessment or taxes levied upon or against the property conveyed by said deed since the year 1891.

In witness whereof the said Lawler and Wells and the said Cowland have hereunto set their hands and seals this twelfth day of May, 1892.

JOHN LAWLER. [SEAL.]
ED. W. WELLS. [SEAL.]
CHARLES COWLAND. [SEAL.]

Attest:
J. C. HERNDON.
A. J. HERNDON, JR.

115 EXHIBIT "B."

The agreement or escrow dated May 12, 1892, between John Lawler, Ed W. Wells and James Cowland and deposited with the Bank of Arizona at Prescott Arizona and attached hereto, is hereby changed and modified as follows:

1st. That payment mentioned in said agreement to be made on the 12th day of May 1893 may be made by said Cowland as follows: Nine thousand and ninety-eight dollars in cash which now stands deposited to said Lawler and Wells at the Bank of Arizona: Four thousand five hundred dollars to be paid in cash to said Lawler and Wells at the Bank of Arizona on the 1st day of June 1893 and a like sum on the first day of each of the following months, viz: July, August, September, October and November 1893. And the further sum of one hundred thousand dollars and the interest of said third payment in said escrow mentioned remaining due and unpaid on said 12th day of November, 1893.

2nd. The payment of $125,000 and interest known as the fourth payment mentioned in said escrow, may be made in three equal payments after the 12th day of November 1893: the said payments may be made two months apart next after and following said 12th day of November 1893.

This extension of time in which to make the third and fourth payments mentioned in said escrow is made in consideration of the payment and delivery to said Lawler and Wells of fifty thou-
116 sand dollars of the guaranteed capital stock of the Seven Stars Mining Company, and other valuable consideration.

It is understood and agreed that none of the terms or conditions of the said escrow are to be changed abridged or modified in any particular excepting so far only as to extend the time of payment of the 3rd and 4th payments of said escrow as above stated.

And the said payments hereinbefore specified are to be made at the times and manner stated. And in default *and* the delivery and payment of said stock as aforesaid at the making and deposit of this agreement with said escrow or in default of making either or any, or any part thereof, of said payments as above stated said Lawler and Wells shall have and exercise the same rights and privileges in every particular which they now have under said escrow agreement as if such extension of time of payment, or this agreement had not been made.

And the stock so delivered or paid by said Lawler and Wells and

all sums of money theretofore paid to or for them under and in pursuance of said escrow and this agreement is, and shall be their property, and held by them and forfeited by said Cowland or the party paying the same, as liquidated damages for the failure of said Cowland to carry out the payments and conditions hereinabove stated and agreed to.

All ores mined or taken from the property mentioned in said escrow and the proceeds thereof shall continue to belong to said
117 Lawler & Wells and said proceeds shall be applied to the payment of the amounts hereinbefore stated, which payments shall cease to draw interest when so made.

JOHN LAWLER.
(Sg.)
ED. W. WELLS.
(Sg.)

May 13, 1893.

(Endorsed:) No. 2365. Fourth district court Yavapai county, Arizona. Clinton B. Wiser *et al. vs.* John Lawler & Ed. W. Wells *et al.* Separate answer & cross-complaint of defendants Lawler & Wells. Filed April 15th, 1895, at 10 o'clock a. m., A. J. Herndon, clerk. We hereby acknowledge service of the within answer and cross-complaint and admit receipt of a copy thereof, this 15th day of April, A. D., 1895. Johnston & Sloan, G. W. & J. Kretzinger attorneys for plaintiffs.

118 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

CLINTON B. WISER ET ALS., Plaintiffs,
*vs.*
JOHN LAWLER, ED. W. WELLS, ET ALS., Defendants.

Said plaintiffs, Clinton B. Wiser, C. M. Field, James A. Ferguson, Dorsay Neville, Mary M. Heath, John J. Miller, John A. Kerr, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, in this their amended complaint, complain of said defendants, and each of them and allege:—

II.

That said plaintiffs, Clinton B. Wiser, C. N. Field, J. J. Miller, and John A. Kerr, are each residents of the city of Chicago, county of Cook, State of Illinois; said James A. Ferguson, Dorsey Neville, Mary M. Heath, Henry L. Mugsford, and William J. Foster, are residents of the city, county and State of New York; said Edgar G. Miller is a resident of the city of Baltimore, State of Maryland; said L. F. Hiorne is a resident of the city of Ouaquaga, Broome county, State of New
119 York; said Sidney G. Law is a resident of the city of West New Brighton, Staten Island, State of New York; said Ed-

ward M. Smith is a resident of Brooklyn, State of New York; said Harper Smith is a resident of the city of Philadelphia, State of Pennsylvania; said Benjamin Goodman is a resident of the city of Newark, State of New Jersey; said Lester M. Crouch is a resident of the city of Paterson, State of New Jersey; said John B. Clute is a resident of the city of Schenectady, State of New York; said Katie T. Courtney is a citizen of the city of Worcester, State of Massachusetts; said H. S. Anders is a resident of the city of Philadelphia, State of Pennsylvania; said Cecil Quinten is a resident of the city of London, England; and that said defendants John Lawler and Ed W. Wells, are residents of the city of Prescott, Yavapai county, Arizona Territory; that the Seven Stars Gold Mining Company was incorporated, organized and exists as a corporation under and by virtue of the laws of the State of New Jersey; that the Industrial Mining & Guaranty Company, is a corporation incorporated, organized and exists as a corporation under and by virtue of the laws of the State of New Jersey; that said John Griffen is a resident of Jersey City and State of New Jersey; that the Bank of Arizona is a corporation organized and existing under and by virtue of the laws of the Territory of Arizona located at Prescott, Yavapai county, Arizona Territory.

II.

That on, and prior to May 12th, 1892, said defendants
120 Lawler and Wells were in possession of a certain group of mines containing gold-bearing quartz, lodes or veins, located in Eureka mining district in the county of Yavapai and Territory of Arizona and described as the "Hillside," "Seven Stars," "Happy Jack," "Contact No. 1" and "Contact No. 2" and "Camp," and the said defendants gave out, claimed and represented that they held title thereto through or under patents issued by the United States; that said defendants Lawler and Wells were also at and prior to the same date in the possession of the following group of mines and mining claims said to carry and contain gold-bearing quartz, lodes or veins, the "Midnight," located January 1st, 1892, "Morning Glory," located January 1st, 1892, "Water" located January 1st, 1892, "Hidden Treasure," located January 1st, 1891, "Sucker," located January 4th, 1891, "Side" located June 21st, 1890, "Purple Rose," located August 10th 1886, "Southern Belle," located March 11th, 1887, "Lucky Cuss," located June 23rd, 1887, "Robert E. Lee," located June 23rd, 1887, "Centipede," and "Goodenough;" that said last group of mines were upon public lands of the United States and situate in the mining district and county aforesaid; and said Lawler and Wells gave out and represented that the possession of said last group of mines was vested in them by virtue of their rights therein and their claims thereon, as locators thereof and under proper and sufficient transfer from the original locators thereof; that at and prior to the date aforesaid a
121 large amount of development work had been done upon said mining properties and a large amount of valuable ore had been taken therefrom; that there had been constructed thereon a

small steam quartz mill, fully equipped for operation, and that said mining properties has been otherwise developed and supplied with implements, appliances and supplies for working and further development and said Lawler and Wells gave out and represented that they were the owners thereof with full right and authority to sell and dispose of the same; that on or about the 12th day of May, 1892, a certain negotiation was entered into by and between the said Lawler and Wells and one H. H. Warner and one Charles Cowland, whereby and through which said negotiation the said Lawler and Wells and the wife of said Wells sold and transferred to said Charles Cowland by written instrument duly executed and acknowledged before an officer of said county, authorized by the law of said Territory to take and certify to acknowledgments of such instruments, said entire group of mines and mining properties, lodes and veins above described, together with said stamp mill, its equipment and all other buildings, utensils, horses, wagons, appliances, material, blacksmith's outfit and all other material substances of every kind and nature being upon said mining properties or pertaining or appurtenant thereto, for the sum of $450,000.00 in cash, the payment of which by said Cowland to said Lawler and Wells was duly acknowledged by proper recital upon the

122 face of said instrument of sale and conveyance; that said instrument and deed of transfer further contained the usual covenants against encumbrance with full and sufficient warranty of title, all of which more fully appears by reference to a copy of said deed of conveyance attached to the original complaint herein and marked "Exhibit A" to said original complaint and which is now and here referred to and made a part of this amended complaint, with the same force and effect as if here recited in full, that thereafter the said Cowland and the said H. H. Warner engaged and arranged to vest the title to said property and properties and each and every part of the same in the Industrial Mining & Guaranty Company, a corporation organized and existing under the laws of the State of New Jersey, in trust for the time being, for the express purpose of enabling said Cowland and Warner to put on foot, incorporate and organize a company to be known as the Seven Stars Gold Mining Company (heretofore called for brevity gold company), to which company, so conveyed by said Cowland and Warner to said Industrial Company by a further deed of conveyance should be conveyed and vested in said gold company: that pursuant to this arrangement and for the purpose of carrying the same into effect, said Cowland did on the 15th day of June, 1892, execute and acknowledge his deed of conveyance to said Industrial & Guaranty Company passed to it the title to said mining properties and each and every part thereof, together with all the

123 improvements and personal property in its entirety so conveyed to said Cowland by said Lawler & Wells, a copy of which said deed of conveyance is attached to the original complaint herein and is made "Exhibit B" thereto, and is now and here referred to and made a part of this amended complaint with the same force and effect as is here inserted; that in further consummation of

said arrangement the said gold company was, to wit, on August 17th, 1895, fully incorporated and organized under and in pursuance of the laws of the State of New Jersey; that on the 10th day of September, 1892, at a meeting of the board of directors of the said guarantee company, a resolution was unanimously adopted authorizing and directing the conveyance to the said gold company of the said above-described mining property and properties upon the company showing that it had placed $200,000.00 for working capital in its treasury and upon said guarantee company receiving from the said gold company $2,800,000.00 in cash or in stock of the said gold company, which resolution for greater certainty is made a part of the said original complaint and exhibited therewith and is now and here referred to and made a part of this amended complaint; that in pursuance of said resolution and the plan aforesaid, stock, to wit, $2,800,000 of the shares of the stock of the said gold company were duly issued, placed upon the market and offered for sale by the officers of the said guarantee company and the said gold company, and a large amount of said stock,
124 amounting in the aggregate to a sum much greater than two hundred and fifty thousand dollars, face value, was sold to plaintiffs and other various parties in the manner following: The said defendants Lawler and Wells were fully advised, notified and informed of the plan and purpose of said Warner and Cowland to organize said gold company and to deed or have conveyed to it the said mining properties and the said Lawler and Wells were further fully advised, informed and notified on and before the 24th day of September, 1892, that the said Warner and Cowland were to offer the stock of said gold company for public subscription and sale in the manner hereinafter stated; that on or about the 24th day of September, 1892, or shortly prior thereto, the said Lawler, representing and as agent of the said Wells, and acting for both of said defendants, was in the city of New York, and after the passage of the resolution above referred to by said guarantee company authorizing the conveyance of said mining property upon the terms and conditions therein stated, and prior to the execution of any deed or contract of conveyance for said property or any part thereof to the said gold company, as is by said resolution provided, the said Lawler, well knowing the then condition of the title to said mines and mining properties, on his own behalf and on behalf of the said Wells, and being fully advised in the premises, assisted and aided the said H. H. Warner to prepare and cause to be issued a prospectus entitled and reciting among
125 other things, "Seven Stars Gold Mining Company, incorporated under the laws of the State of New Jersey. Fully paid and non-assessable. No individual liability whatever. Capital $3,000,000.00. 600,000 shares. $5.00 each. Of which 200,000 shares 15 per cent. guaranteed stock, at $5.00 per share, are now offered for public subscription payable as follows." Then follows in said prospectus the price per share and the conditions and terms of payment. On the second page of said prospectus it is represented and recited that, "This company is formed to acquire without

further expense or liability to subscribers on October 1st, 1892, as a going concern, and to provide a working capital to further equip and develop the Seven Stars, Hillside and Happy Jack mines, comprising the following patented claims: Seven Stars, Happy Jack, Hillside, Camp, Contact No. 1 and Contact No. 2; also the locations known as the Mesa, Elwood, Midnight, Mescal, Waterfall and Boulder;" and the said prospectus also contained other and further recitals and representations of full, absolute and unquestionable title to said mines and mining property in the said gold company and contained no representation, statement or recital showing or tending to show, directly or indirectly, any right, title, interest, claim, lien or encumbrance in or to said property and properties or any part thereof in any other person or persons, firm company or corporation; that accompanying and as a part of said prospectus there was prepared a map or plat of

126 said mining properties and also the town site adjacent thereto by the said Lawler and Wells and said Warner, upon which map the following representation and statement appears: "Map of the group of mines belonging to the Seven Stars Gold Mining Company, Yavapai county, Arizona;" that there was also at the same time prepared a blank application of subscription for shares of stock in the said gold company, which application or blank subscription accompanied and was prepared and intended by said Lawler and Wells and said Warner to accompany each and every of said prospectuses and maps and as a part thereof, and for greater certainty, accuracy and fullness the said prospectus and map and blank subscription or application were and are attached and marked as exhibits to the original complaint herein and are now and here referred to and made a part of this amended complaint with the same force and effect as if here inserted.

Plaintiffs further aver that the said prospectus, map and blank application for stock were fully printed and prepared with the assistance of said Lawler and Wells and they, the said Lawler and Wells, had full knowledge and notice of the printing and preparation thereof and fully authorized, sanctioned, encouraged and acquiesced in the same and in the purpose and object thereof and at no time made any objection or protest on account of the preparation or distribution of said prospectuses, maps or blanks applications.

127 Plaintiffs further aver that the said prospectus, map and blank application were distributed throughout the United States by the said H. H. Warner and the secretary and treasurer of the said gold company; that about 300,000 copies thereof were so distributed; that a large number of said copies of said maps, prospectuses and blank applications were forwarded to the said Lawler and Wells at Prescott and the banking houses in the city of Prescott and were distributed by said Lawler and Wells to various persons in said city of Prescott and elsewhere; that all of said prospectuses, maps and blank applications were distributed and circulated as aforesaid to induce and effect the sale of the stock of said gold company; that such distribution was made and took place with the assistance of said Lawler and Wells, and they and

each of them had full knowledge and notice of such distribution and fully authorized, sanctioned, encouraged and acquiesced in the same, and made no objection or protest on account thereof; that copies of said prospectus, map and blank application came to the plaintiffs herein in the course of such distribution during the month of October, 1892, and the said plaintiffs without any knowledge whatever relying upon and believing and being led, induced and influenced by the statements and representations made and contained in the said prospectus and map and blank application, and especially the representations and recitals therein

that said stock was fully paid and non-assessable,
128 that the property was rich and valuable, and that the
money was for working capital and to make said company a "going concern" and that the said mining property was owned and belonged to said gold company, severally subscribed for shares of the capital stock of the said gold company, to wit, for twenty thousand shares of said stock upon the terms, conditions and representations of the said prospectus, map and blank application, and paid for the said stock to the said gold company the sum of five dollars for each and every of said shares; that said representations and recitals aforesaid and contained in said prospectus, map and blank application as to the said gold company being the owner of said mines and mining properties, were corroborated and the truth thereof further evidenced by the fact and facts then existing to the knowledge of the plaintiffs, to wit: that before and at the date of the said plaintiffs so subscribing, taking and paying for said shares of stock as aforesaid, the said gold company was in actual, open, public, notorious and undisputed possession of said mines and mining properties, and the said gold company so being in possession thereof was investing large sums of money in and about the improvement thereof, and in the further development thereof, and was working said mines and mining properties and receiving the proceeds derived from the ores taken therefrom, with the full knowledge, consent and sanction of the said Lawler and Wells, and without any protest
129 or objection thereto or on account thereof by them or either of them, that hereafter and herein the said possession by said gold company and its acts and doings thereunder will be more fully stated. That many other citizens of the United States relying upon and believing and being led, induced and influenced by the said representations and recitals in the said prospectus and map and the said possession and use of said mines and mining properties by the said gold company as aforesaid, subscribed upon said applications for stock for various and numerous shares of the stock of said company and paid therefor to said company the sum of $5.00 for each and every share of stock so subscribed by them.

That about the same time, to wit, September 27th, 1892, there was issued another printed prospectus for the purpose of distribution in England and Scotland; that this second prospectus was prepared by the said Warner and the officers of said gold company with the assistance, knowledge, consent, sanction and acquiescence of the said Lawler and Wells, in and by which prospectus it is stated that the

"mines owned by the company are situated in the Eureka mining district, Arizona, fifty miles from Prescott on the Arizona Central railway," etc., and contained many other representations and statements showing and intended to show full, absolute and unquestionable title to said mines and mining property in the said gold company and contained no representation or recital showing or
130 tending to show, directly or indirectly, any title, interest, claim, lien or encumbrance in, to or upon said property or properties or any part thereof in any other person or persons, firm, company or corporation; that the said prospectus, together with a map and blank application for stock, in like form as the map and application accompanying the American prospectus, were generally circulated in the city of London and other cities in England and also in cities and town in Scotland; that many residents in England and Scotland upon receiving said prospectuses, maps and blank application, and relying upon the truth of the statements and representations therein contained—the said gold company then being in possession and operation of said mines and mining property as aforesaid—subscribed for a large number of shares of stock of said gold company and paid therefor to the said gold company five (5) dollars per share; that the said defendants Lawler and Wells had full knowledge and notice of such distribution, circulation and sale of stock upon said English prospectus, map and blank application, and fully assented thereto and acquiesced therein and made no objection or protest on account thereof.

Plaintiffs further aver that all the money paid for said stock by plaintiffs and others was received by the treasurer of said gold company, and by said company, or its duly authorized
131 agents, was disbursed as hereinafter stated; that on or about the 17th day of August, 1892, the time of the organization of the said gold company, as aforesaid, the possession of said mining property, including the mines and locations hereinbefore described and all machinery, tools, supplies, improvements, and all personal property of every kind and nature situate thereon, with the full knowledge, notice, assent and acquiescence of the said Lawler & Wells, was turned over to the said gold company by the said Warner, Cowland and Industrial Company, and thereupon the said gold company by its superintendent forthwith commenced the erection of mills for the better equipment of said mines and mining property and for the purpose of working and developing the same and extracting gold and other precious metals from the ore taken therefrom and assorting and shipping the same to the market for sale and disposition; that from said last-mentioned date until on or about the first day of June, 1893, said gold company was in full possession, control and management of the said mines and mining properties; that all supplies therefor were purchased in its name and all sales of ore were made and the proceeds thereof used and disbursed by it as its own and debts were contracted with various persons in and about the operation and improvement of said property in the name of said gold company; that during said period there was realized

from the sale of preferred stock from American subscribers thereof the sum of $186,010.00 and from English subscribers thereof
132 $123,881.61 and from the sale of the regular stock of the company $2,018.80, and from the sale of ores taken from the said mines during said period while the same was being operated by the said gold company the sum of, to wit, $77,974.69, making a total of $389,885.09 received by the said Seven Stars Company as proceeds of the sale of its stock and the operation of said mines; that out of this amount $231,151.82 was paid directly and immediately by the said gold company to the said Lawler & Wells on the alleged purchase price of said property; that in addition thereto said gold company paid $160,000.00 in operating the said mines & mining property while the said Lawler & Wells were receiving the gross proceeds of such operation; that the greater part, to wit, $200,000.00 of said last-mentioned amount so immediately and directly paid by said gold company to said Lawler & Wells was received from the plaintiffs and others subscribing for the stock of said company as aforesaid and being the purchase price paid for said stock, and the same was paid to and received, accepted and retained by the said Lawler and Wells with full knowledge and notice on their part of how, in what manner and by what means the same had been procured and received by the said gold company; that there was also paid by the said gold company from said receipts for operation expenses and for the plant, machinery and equipment purchased and used in and on said property, including salaries of mining engineers and the expenses of con-
133 ducting the office of the company, the sum of $120,586.90; that there was also expended and disbursed from said sum so received as aforesaid by said gold company for sundry expenses, prospectuses, postage, printing, etc., the sum of $39,579.45; that there was also disbursed and paid from the sum received to the American subscribers of the stock of said company as dividends thereon the sum of $15,194.20, and to the English subscribers of said stock as dividends upon their holdings the sum of $6,937.50, of all of which transactions, receipts, disbursements, payments, etc., the said Lawler & Wells had full knowledge and notice; that the greater part of said disbursements were made through the Bank of Arizona of Prescott, Arizona, of which the said Wells was at that time a director; that on or about the first day of October and prior to the sale or disposition of any of the stock of the said gold company as aforesaid the books which had theretofore been kept by said Lawler and Wells touching the business and conduct of said mines and mining properties were changed and a new set of books opened in the name of the said gold company, in which the receipts and disbursements of said company, as above set forth, were duly kept, entered and recorded, and to which said books and the accounts therein shown the said Lawler and Wells had full access and of which they had full knowledge.

Plaintiffs further aver that on or about the fourth day of
134 May, 1893, after the issuance and distribution of said prospectuses, maps and blank applications and after the said gold company had been for some time in the possession and operation of

said mines, and after the plaintiffs and others in like estate had subscribed for the stock of said company as aforesaid and the said Lawler & Wells had received the proceeds of such sale and with full knowledge thereof and of all of such matters and things, the said Lawler & Wells subscribed for $50,000.00 of the capital stock of the said gold company, which was issued and delivered to them and to which they became entitled and which they now hold.

Plaintiffs further aver that on, to wit, the 8th day of May, 1893, the said Lawler, with the knowledge and acquiescence of the said Wells, was duly appointed superintendent of the said gold company at a large salary and by it was placed in possession and management and control of said mines and mining property as its superintendent, and as such superintendent for and on behalf of said gold company the said Lawler entered into and continued the control and management of said mines and mining property under the direction and supervision of the board of directors of said gold company from the said last-mentioned date to or about the 20th day of September, 1893; that on said last-mentioned date, to wit, on or about the 20th day of September, 1893, the said Lawler and Wells, while the said Lawler was so in possession and managing said mines and mining property as the superintendent and for and on behalf
135 of said gold company, wrongfully and fraudulently assumed and asserted said possession of said mines and mining properties and all the improvements and effects of every kind and nature thereon and thereto belonging as their possession for and on their own behalf and adverse to and exclusive of said gold company and from thence to now they have continued in such adverse possession claiming and pretending that they are the absolute owners of the said mines and mining properties, and that the said gold company had no right, title or interest therein or thereto, and as a reason for such wrongful and fraudulent acts and doings by and on the part of the said Lawler and Wells in the premises they assert, pretend and give out that they had not been paid the full purchase price of said mines and mining property by the said Cowland, and that by reason of such alleged non-payment the said Lawler and Wells were entitled to seize and retake the said property and to change the said possession from the possession of the said gold company to their possession, and thus forever determine the possession and right of the said gold company to possession or right to possession or title therein or thereto, and asserted their right to do so under and by virtue of a certain secret agreement made and entered into by the said Lawler and Wells with the said Cowland, which said secret agreement bears date the 12th day of May, 1892, and appears to have been executed on the same day as the deed from said Lawler and Wells
136 to said Cowland, as aforesaid; that said deed or a duplicate execution thereof appears to have been annexed to and made a part of the said secret agreement by words recited in said secret agreement, and that the two together were deposited in escrow in the Bank of Arizona of Prescott, Arizona, of which said bank said defendant Wells was a director at, before and after said bank so accepted the same in escrow as aforesaid; that in and by said secret agree-

ment it is provided, among other things, that $450,000.00 is to be paid by said Cowland in installments, the first installment being $20,000.00 in cash paid at the date of the execution of such secret agreement, and the last installment of the purchase price being due and payable on November 12th, 1893, all of which will more fully appear by reference to said secret agreement a copy of which is attached to the original complaint herein, and marked Exhibit E thereto, and is here and now referred to as a part of this amended complaint.

"That none of the plaintiffs and none of the stockholders of the Seven Stars Gold Mining Company in like estate, had any notice or knowledge of the acts of the said Warner, Cowland Lawler or Wells in the negotiation and execution of said escrow agreement, or as to the acts and doings of said Cowland, Warner, Lawler or Wells, or the Industrial Company, or any of its officers or agents, or its board of directors, or of the board of directors, agents or officers of
137 the said gold company, touching the said escrow agreement, or any act or payment thereunder, until the wrongful seizure by Lawler and Wells herein alleged."

Plaintiffs further aver that said Lawler and Wells lived in the said city of Prescott or in the immediate vicinity of Prescott, and near said mines and mining properties during all of said time and times during which said transactions aforesaid occurred, and had full notice and personal knowledge of the possession of said properties by said gold company, and that it was working, developing and improving the said properties and was conducting the business thereof as aforesaid, and also had full notice and knowledge that the organizers and promoters of the said gold company were holding out to the public and to would-be purchasers of the said gold company's stock that it held full title and right of possession to said mines and mining properties and each and every part thereof under and by virtue of an absolute and unconditional deed of conveyance from said Lawler and Wells to said Cowland and the successive conveyances as aforesaid and as stated and represented in said prospectus and map, as aforesaid, and also had full notice and knowledge that the said gold company was offering for sale and making sale of its stock to plaintiffs and others as aforesaid, and that said stock would have no other value than that represented in and by a full and sufficient title to the said mines and mining properties, and also had
138 full notice and personal knowledge that the said gold company was receiving and using money derived from the sale and sales of its capital stock to plaintiffs and others in and about the further development, improvement and working of said mines and mining properties as aforesaid as its property and not otherwise, and that it was represented in and by the said prospectuses and maps that the entire proceeds derived from the sale and sales of stock were to be used in and about the improvement, further development and working of said mines and mining properties, and that it was never stated, represented or given out to plaintiffs and others in like estate as stockholders of the said gold company either

before they became such stockholders thereof or at the time they purchased their stock therein that any part of the purchase price remained due and unpaid to said Lawler and Wells, or that any part of the proceeds derived from the sale or sales of said stock paid in by plaintiffs and other purchasers of said stock would be used or any portion thereof would be turned over to said Lawler and Wells toward the payment of any unpaid purchase price thereof, and said Lawler and Wells had full knowledge and notice that the books of account kept of and touching said business and the conduct thereof by said gold company while it was so in possession and was so managing, improving, developing and working said mines and mining properties, were kept in its name and that while said Lawler was acting as superintendent
139 thereof, and while said gold company was in possession thereof as aforesaid, the entries of the transactions of said business so conducted in the name of said gold company were made in said books so kept in the name of said gold company under the direction of said Lawler as such superintendent, and he as such superintendent in fact conducted said business in the name and on behalf of said gold company as its superintendent and in like manner as if said Lawler and Wells had no claim whatever in law or in equity in or to said mines and mining properties, or any part thereof, or for any purpose whatsoever, and they, the said Lawler and Wells, or either of them, did not by any word or act, directly or indirectly, assert, make known or claim any right, title, interest or claim in the said property or properties, or any part thereof, or that the same or any part thereof belonged to them, the said Lawler and Wells, in any form or to any extent, or to assert in any manner that the said mines and mining property did not belong to the said gold company, to the knowledge of said gold company in like estate, but on the contrary and during all the time and times aforesaid, and during the occurring and happening of all the transactions aforesaid, and each and every of them, the said Lawler and Wells stood silently by with the knowledge aforesaid and acquiesced and participated therein, and permitted, encouraged and sanctioned the public, including plaintiffs and others in like estate, to purchase stock of the said gold company and
140 pay therefor to said gold company believing that it owned said mines and mining property as aforesaid and to give credit to the said gold company as the actual and *bona fide* owner of said mines and mining properties, and at no time prior to the said 20th day of September, 1893, and while the said Lawler and Wells were acting, acquiescing and participating in the manner and with reference to the transaction and transactions and each and all of them as aforesaid give out or assert any right or rights under and by virtue of said secret agreement, or that they or either of them under and by virtue of said secret agreement had the right at any time or at the time and under the condition and in the manner alleged in said secret agreement, to retake possession of said mines and mining properties adverse to said gold company and to determine all claim on its part therein or thereto, and to thus render all of the

stock of plaintiffs and others in like estate wholly worthless and of no value whatever, all of which acts and doings, silence and acquiescence, encouragement and participation aforesaid on the part of the said Lawler and Wells the said plaintiffs aver estop them, the said Lawler & Wells, in law and in equity and they and each of them are now estopped as against and in favor of the said plaintiffs and others in like estate from disputing or questioning full title to said mines and mining properties in the said gold company, and from disputing or questioning its right to have and hold full possession thereof, with full right to operate and conduct the business thereof
141 in the development and working of said mines and mining properties, and in receiving the entire proceeds thereof and using the same for the benefit of its stockholders and *bona fide* creditors, and that they and each of them are now likewise estopped from asserting any title therein or thereto, or the right of possession thereof, or the right to control the same, or to collect against the same, or against the said gold company by suit or in any manner any further purchase-money, and from claiming that any part of the purchase or contract price for said mines and mining properties, or any part thereof remains due to said Lawler and Wells.

Plaintiffs further aver that by reason of said transactions and each of them as aforesaid, and the statement and representations in the said prospectus as to the objects and purposes for which the money realized from the sale of stock was to be used and devoted, and the other and further statements and representations in said prospectus and map, and the full knowledge of the said Lawler and Wells with respect thereto, before and at the time of the receipt of the moneys aforesaid, and as the same occurred, the said Lawler and Wells had no right in law or in equity to receive any of the proceeds derived from the sale of said stock of said gold company from plaintiffs and others in like estate, and that their receipt and retention thereof will operate to defraud and injure the plaintiffs and others in like estate out of the entire amount
142 derived from the proceeds of the sale of stock of said gold company as aforesaid and received by said Lawler and Wells, and likewise the said Lawler and Wells, or either of them, in law or in equity, had no right to receive the proceeds of the operation of the said mines and mining property by the said gold company as aforesaid paid to the said Lawler and Wells in the manner and under the circumstances aforesaid as and for the purchase price for a title which they had estopped themselves from asserting as aforeshown, and that the said gold company is entitled to have, receive and recover the said sum and sums of money from the said Lawler and Wells for the benefit and in the interest of plaintiffs and others in like estate and the innocent and *bona fide* creditors of said gold company.

Plaintiffs further aver that the acts and doings of said Lawler and Wells as aforesaid, and their dispossession of said gold company as aforesaid, and their assertion of title thereto, thereby preventing said gold company from working and operating the said mines and mining properties have been and resulted in great damage to said gold

company and to plaintiffs and others in like estate, for which the said Lawler and Wells are liable and in equity ought to be required to compensate and pay; that said acts and doings of said Lawler and Wells as aforesaid, and said unlawful and wrongful seizure by them of said mines and mining properties as aforesaid so greatly embarrassed said gold company financially that it became in-
143 solvent, and John Griffin of the State of New Jersey was appointed receiver thereof in and by one of the New Jersey chancery courts having competent jurisdiction in the premises, but that said Griffin has not taken possession of any of said mines and mining properties by virtue of his said receivership by reason of the acts and doings of said Lawler and Wells aforesaid and has been unable so to do.

Plaintiffs further aver that they severally hold and own in their own right 20,000 shares of stock of the said gold company standing upon the books of said company in their several names, which aggregate in face value more than one hundred thousand dollars, divided into shares of five (5) dollars each; that all of said stock was purchased at the time and in the manner hereinbefore stated; that there are a large number of other stockholders in like estate with plaintiffs, to wit, about three hundred thereof, who hold various other large amounts of stock in said company; that all of said stockholders have authorized the institution and prosecution of this suit and fully consent thereto; that to make all of said stockholders plaintiffs would be wholly inconvenient and in law and equity unnecessary; that to compel each stockholder to sue separately would involve a great and expensive multiplicity of suits; that although the plaintiffs claim and assert and now insist that they have the right in law and in equity to bring this suit, in their own right and title on behalf of themselves and
144 all other stockholders in like estate to obtain the relief hereinafter prayed, yet before bringing this suit they requested the receiver then and there in possession and charge of the corporate property and affairs of said gold company, and who as such was authorized to protect the interests of the stockholders to bring some suit to protect and secure the mining property and title herein described, as herein prayed or as he might be advised, and he refused so to do.

Wherefore, the said plaintiffs bring this suit and make defendants hereto the said John Lawler, Ed. W. Wells, The Seven Stars Gold Mining Company, The Industrial Mining & Guaranty Company and John Griffin, and pray that they may be required to make their joint or several answer hereto, but not under oath, their answer under oath being hereby waived, and plaintiffs pray an account may be taken herein with said Lawler and Wells under the proper order of this court, and with such specific instructions therein as may accord with the practice in force in this honorable court controlling such proceedings in like causes; that by such accounting the said Lawler and Wells may be required to show all payments made to them as, for and on account of the alleged purchase price on said property, and also all the proceeds derived from the mining and

sale of ore or ores from said mines and mining properties from the time of their alleged wrongful seizure as aforesaid to the time of the taking of said account of the trial of this cause,
145 and plaintiffs further pray that upon the final hearing hereof and by final decree of this court the said Lawler and Wells, and each of them, may be held and adjudged to be estopped in the premises and be perpetually enjoined from disputing full and absolute title of said gold company in and to said mines and mining properties, and likewise from claiming, asserting or insisting upon any right, title or interest therein or thereto, or any possessory rights with respect thereto, in any manner or to any degree, and that the full, absolute title to said mines and mining properties and each and every part thereof be adjudged and decreed to be in the said gold company, and to quiet the said title in said company and relieve it from all adverse claim or title in the premises, and that said Lawler & Wells may be decreed to quitclaim in the usual form of such conveyance and release unto said gold company all their right, title and interest therein and thereto of every kind and nature whatsoever, and to authorize and empower by proper recital in said final decree the master of this court, or some other proper person appointed as special commissioner therefor, to execute said conveyance on behalf of said Lawler and Wells, and that said Lawler and Wells be decreed to repay and turn back to said gold company all moneys paid by said gold company or on behalf of said gold company to said Lawler and Wells out of any proceeds derived from the sale of its stock to plaintiffs or others in like estate, or out of the
146 proceeds derived from the said mines and mining properties and the conduct of the business thereof, from the date of said gold company's possession and operation thereof as aforesaid, with interest thereon at the rate allowed by law from the date of such payments; that this honorable court will determine upon said hearing the amount of damages to said property and the damages suffered by said gold company and through it by plaintiffs and others in like estate, by the seizure of said mines and mining properties, and by the disposition thereof of said gold company, and also find, fix and determine the value and amount of ore or ores, mineral or minerals, taken from the said mines and mining property by said Lawler & Wells from the time of such seizure to the date of said hearing, and upon finding, fixing and assessing said damages and the value of such ore as aforesaid, to include the same in said final decree and to adjudge the amount thereof against the said Lawler and Wells, and to decree the payment thereof by said Lawler and Wells, together with all the moneys aforesaid, to said gold company by a short day to be named in said decree; and such other, further and different relief may be decreed in the premises as upon final hearing hereof may seem to this honorable court just and equitable, and plaintiffs will ever pray.

And the said plaintiffs do*th* further pray that in the meantime and pending this suit this honorable court may appoint some fit person as receiver herein, with full and sufficient authority
147 aptly recited in his said order of appointment to take and receive from said Lawler and Wells, or from any person or

persons now in possession of said mines and mining properties, and each and every part thereof, possession thereof, and to hold the same as such receiver subject to the further order of this court, with sufficient authority to said receiver to operate said mines and mining properties if it shall be shown upon the entry of said order that the working thereof may prevent waste and damage or can be made profitable to the parties to this suit who may be shown upon the final hearing hereof to be entitled thereto, and to hold the proceeds derived from the working of said mines and mining properties subject to the further order of this court; and plaintiffs pray that summons may be issued out of this court and under its seal for service upon said defendants, and each of them, therein requiring them to appear herein upon a day to be named in said summons, and thereafter to do all things and to abide the issues of this suit as this honorable court may order and direct.

G. W. & J. T. KRETZINGER,
K. E. SLOAN &
T. W. JOHNSTON,
*Attorneys for Plaintiffs.*

(Endorsed:) No. 2365. C. B Wiser, *et als. vs.* John Lawler, *et als.* Amended complaint. Filed May 13th, 1896 at 3 o'clock p. m. A. J. Herndon clerk. By Wm. Wilkerson deputy. Copy of within served on us May 13th, 1896. Herndon & Norris, att'y- for def'ts.

148 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

CLINTON B. WISER ET AL., Plaintiffs,
*vs.*
JOHN LAWLER ET AL., Defendants.

No. 2365. Separate Answer of John Lawler and Ed. W. Wells to the Amended Complaint Herein.

The defendants, John Lawler and Ed. W. Wells, for their separate answer to the amended complaint herein, say:

For a first ground of defense: That the said amended complaint is multifarious in this, to wit: That it appears therein that the same is exhibited against these defendants and The Seven Stars Gold Mining Company, The Industrial Mining and Guaranty Company and John Griffin, as defendants thereto for several distinct matters and causes, in many whereof, as appears by said amended complaint, these defendants are in nowise interested, and, by reason of such distinct matters, said amended complaint is drawn out at considerable length, and by charging distinct matters together which do not depend upon each other, the proceedings in the progress of said suit will be intricate and prolix, and these defendants be put to unnecessary charges and expenses in matters which in nowise concern them.

Wherefore, these defendants demand the judgment of this
149 honorable court whether they shall be compelled to make any further and other answer to the said amended complaint

or any of the matters or things therein contained, and pray to be hence dismissed with reasonable costs herein expended.

J. F. WILSON,
HERNDON & NORRIS,
E. M. SANFORD,
*Attorneys for Defendants, Lawler and Wells.*

*For a second ground of defense:* That these defendants except to the sufficiency of said amended complaint for the reason that the same does not state facts sufficient to constitute a cause of action in favor of the plaintiffs, or either of them, or against these defendants.

Wherefore these defendants pray judgment as to the sufficiency of said complaint.

J. F. WILSON,
HERNDON & NORRIS,
E. M. SANFORD,
*Attorneys for Defendants, Lawler and Wells.*

*For a third ground of defense:* These defendants admit that on the 12th day of May, 1892, they were the owners of the mines, mining claims and property described in the amended complaint
150 herein. These defendants admit that on May 12th, 1892, and for a long time continuously theretofore, they held out and represented that a large amount of development work had been done on said mining property; that a large amount of valuable ore had been taken therefrom; that a quartz mill had been constructed and equipped for operation, and that the said mines were otherwise developed and supplied with implements and appliances for working, as alleged in plaintiffs' amended complaint.

These defendants admit that there has been paid to these defendants on account of the purchase price of said property the sum of two hundred and seventeen thousand, five hundred and eighty-four and $\frac{55}{100}$ dollars ($217,584.55).

That these defendants deny each and every, all and singular, the allegations contained in the amended complaint herein save and except those herein specifically admitted.

Wherefore, these defendants pray that the plaintiffs may take nothing by their said amended complaint, and that these defendants go hence without day and recover their costs herein.

J. F. WILSON,
HERNDON & NORRIS,
E. M. SANFORD,
*Attorneys for Defendants, Lawler & Wells.*

151 For a fourth ground of defense: That the defendants, John Lawler and Ed. W. Wells, did not, by themselves, or with the wife of said Wells, or by their authority or the authority of either of them, sign, execute and acknowledge in writing an instrument wherein, or whereby, they transferred to one Charles Cowland the

mines, mining claims and property mentioned and described in said amended complaint.

Wherefore, these defendants, and each of them, demand proof of the allegation of the execution of said instrument.

J. F. WILSON,
HERNDON & NORRIS,
E. M. SANFORD,
*Attorneys for Defendants, Lawler & Wells.*

For a fifth ground of defense: That plaintiffs, and each of them should not be admitted to say: that the plaintiffs bring this suit in their names, on behalf of themselves and all the other stockholders of the Seven Stars Gold Mining Company in like estate or condition with plaintiffs; that before the bringing of this suit, plaintiffs, as such stockholders, demanded of the directive officers and directors of said gold company, that they should direct and cause suit to be brought in the name of said gold company against the said Lawler and Wells on account of their acts and doings in the premises, and they refused so to do; that the plaintiffs made a like demand upon the said receiver, and he refused so to do;

152 that from the last-mentioned date (August 17th, 1892) until on or about the first day of June, 1893, the said gold company was in full possession, control and management of the said mines and mining property; that the said Lawler and Wells had no right in law or in equity to receive any of the proceeds derived from the sale of the stock of said gold company; that said Lawler and Wells asserted, pretended and gave out that they took possession of said mining property under and by virtue of a secret agreement (meaning thereby the agreement between the defendants, Lawler and Wells, and one Charles Cowland, bearing date May 12th, 1892, a copy whereof is hereto attached marked "Exhibit A" and is made a part hereof as though fully written at length herein); that said Lawler and Wells did not on September 9th, 1893, have the right to give out or assert that under the conditions of the agreement of May 12th, 1892, they could retake possession of said mines and mining properties; that the said Lawler and Wells, and each of them, is, or are, in equity estopped, as against themselves and in favor of said plaintiffs and others in like estate from disputing or questioning full title to said mines and mining properties in said gold company, and from disputing or questioning its right to have and hold full possession thereof, and its right to operate and conduct the business thereof in the development and working of said mines and mining property, and in receiving the entire proceeds thereof and using the same for the benefit of its stockholders and *bona fide* cred-

153 itors, and that they, and each of them, are now likewise estopped from asserting any title therein or thereto, or the right of possession thereof, or the right to control the same, or to collect against same, or against the said gold company, by suit, or in any manner, any further purchase-money, and from claiming that any part of the purchase or contract price for said mines and mining properties, or any part thereof, remains due to the said Lawler

and Wells; that the said Lawler and Wells had no right in law or in equity to receive the proceeds of the operation of said mines and mining properties from the said gold company; that the said gold company is entitled to have, receive and recover these sums and sums of money paid to said Lawler and Wells on account of the purchase price of said mining property,—because these defendants say:

That on the 12th day of May, 1892, these defendants were the owners of those certain mines, mining claims and properties attempted to be described in the amended complaint herein and more fully and particularly described in the deed, a copy whereof is hereto attached marked "Exhibit B" and made a part hereof as though fully written at length herein. That the muniments of title to said properties were on that day of record and recorded in the office of the county recorder of Yavapai county, Arizona, in which said county said mines and mining claims were then and are now located; that said records on that day then showed, and ever
154 since then continuously hitherto have, and do now show, that the title to said mines and mining claims were, and are, vested in these defendants.

That on May 12th, 1892, one H. H. Warner, then well knowing that these defendants were the owners of said mining property, and that the record title thereof, as aforesaid, was then vested in these defendants, did complete negotiations with these defendants for the purchase of the properties mentioned in the original of said "Exhibit B" at the fixed purchase price of four hundred and fifty thousand dollars ($450,000.00), and upon the terms, conditions, forfeitures and defaults and penalties, more particularly set forth and mentioned in the original of said "Exhibit A" hereto attached; that the said H. H. Warner then requested that the said negotiations be reduced to writing, and that in the place and stead of said H. H. Warner the name of Charles Cowland should be written as the party of the second part in said writings; that thereupon, and on that day, at said request, the original of said "Exhibit A" was signed by these defendants and the said Charles Cowland; that contemporaneously with the execution of the original of said "Exhibit A" an instrument was signed (which is the original of "Exhibit B" hereto attached) and acknowledged by these defendants and the wife of the defendant, Wells; that contemporaneously with the signing of said "Exhibits A" and "B," the said H. H. Warner for, and as a part of the consideration of having the originals of said Exhibits "A" and "B" run to and
155 in the name of said Cowland, his heirs and assigns, did sign and deliver to these defendants a certain instrument of writing, a true copy whereof is hereto attached and marked "Exhibit C" and made a part hereof as though fully written at length herein; that immediately upon the signature of the originals of said Exhibits "A" "B" and "C," with the knowledge and consent of said H. H. Warner, and on that day, the originals of said Exhibits "A" and "B" were in accordance with the terms of the original of said "Exhibit A" on that day placed in escrow in the Bank of Arizona, at Prescott, Arizona, as escrow holder thereof, for the use and benefit of the said

Lawler and Wells and the said Cowland, his heirs and assigns, as their interest appears in the original of said "Exhibit A."

That afterwards and on June 15th, 1892, under and by virtue of the laws of the State of New Jersey, a charter was issued to the Industrial Mining and Guaranty Company as a corporation; that afterwards and on June 15th, 1892, the said Industrial Mining and Guaranty Company, hereby designated as and hereinafter referred to as the "guaranty company," was organized, with the said H. H. Warner as president, who from thence and continuously hitherto has been, and is, president of said corporation; that afterwards and on June 15th, 1892, the said Cowland, with the knowledge and consent of said H. H. Warner, executed to the said guaranty company a certain written proposal, a true copy whereof is hereto attached and marked
156 "Exhibit D," and made a part hereof as though fully written at length herein; that on June 15th, 1892, the said H. H. Warner, in writing, did execute another writing endorsed upon the written proposal so executed as aforesaid by said Cowland to said guaranty company, a true copy whereof is hereto attached marked "Exhibit E," and made a part hereof as though written at length herein; that contemporaneously with the execution of said proposal, the said Cowland, with the knowledge and consent of said Warner, executed to said guaranty company an indenture of writing, a true copy whereof is hereto attached and marked "Exhibit F," and made a part hereof as though fully written at length herein.

That afterwards, and on August 13th, 1892, the said Warner made and executed with the said Cowland and with the said Seven Stars Gold Mining Company, a proposed New Jersey corporation, a certain contract in writing, a true copy whereof is hereto attached marked "Exhibit G" and made a part hereof as though fully written at length herein; that thereafter, and on the 16th day of August, 1892, under and by virtue of the laws of the State of New Jersey, there was issued a charter to the Seven Stars Gold Mining Company, a corporation, and afterwards, and on the 17th day of August, 1892, the said Seven Stars Gold Mining Company, hereby designated as, and hereinafter referred to as, the gold company, was organized with the said H. H. Warner as president thereof, who from thence continuously hitherto has been, and now is, such president.
157 That afterwards, and on September 10th, 1892, the board of directors of said guaranty company, with the knowledge and consent of said Warner, who was then acting as the president of said guaranty company and of said gold company, did adopt a resolution, a copy whereof is hereto attached and marked "Exhibit H," and made a part hereof as though fully written at length herein.

That thereafter, and on the 28th day of October, 1892, the said Warner entered into negotiation with these defendants for an extension of payments, and thereupon a written instrument was executed by these defendants, a true copy whereof is hereto attached, marked "Exhibit I," and made a part hereof as though fully written at length herein.

That, afterwards, and on the 31st day of October, 1892, negotiations were entered into by said Warner with these defendants con-

cerning the place of payment of unpaid purchase-money thereafter payable to these defendants, and as the result of said negotiations a written instrument was executed by these defendants, a true copy of which is hereto attached, marked "Exhibit J," and made a part hereof as though fully written at length herein.

That afterwards, and on or about the 20th day of September, 1892, the said gold company, then well knowing of the existence of said escrow agreement and that the same was held by said Bank of Arizona as the escrow holder thereof, and then well knowing that the orignal of said "Exhibit B" was held by said bank to be delivered to said Cowland, or his assigns, only upon the making of all
158 the payments in said escrow agreement specified; and further then well knowing that time was the essence of said escrow agreement, and that upon the failure to make any payments therein specified, that the said deed would forthwith be redelivered by said bank to these defendants; and further then well knowing that said possession of said Cowland, or his assigns, of said mining property would be subject to the legal possession of these defendants; and further then well knowing that the proceeds of any ores taken from said mining properties would have to be applied to the payment of the purchase-money of said property under the terms and conditions of said escrow agreement, and, then claiming to act as the assignee of said Cowland by and under said escrow agreement, did, under the provisions of said escrow agreement then commence mining operations in and upon said mining property, and from thence continuously to, and on or about the 5th day of July, 1893; that between the 20th day of September, 1892, and the 5th day of July, 1893, the said gold company, well knowing the premises, did use, possess, explore, develop, work and operate, under the provisions of said escrow agreement, and no other power or authority, the said mining properties, and the proceeds derived therefrom, the said gold company, under the provisions of said escrow agreement, and in attempted compliance with the terms of said escrow agreement, did pay and cause to be paid such proceeds to these defendants as and for a part payment of the purchase price of said
159 property according to the terms of said escrow agreement, and the amount of said proceeds, when so paid, were credited upon the payments next thereafter to become due as aforesaid under said terms and conditions.

That on or about the 12th day of May, 1893, the said H. H. Warner, then being the president of said gold company, did enter into negotiations with these defendants for the extension of certain payments of the purchase price of said property, evidenced by said original escrow agreement, "Exhibit A," and the supplemental agreement thereto; and as the result of such negotiation the said Charles Cowland and these defendants, at the instance of, and with the knowledge and consent of said Warner, did execute a certain supplemental agreement to said original escrow agreement, a true copy whereof is hereto attached, marked "Exhibit K," and made a part hereof as though fully written at length herein.

Wherefore these defendants pray judgment if the said plaintiffs, or either of them, or those for whom they claim to be acting, or in like estate with them, ought to be admitted as against the acts and deeds of said gold company to say or allege:

That the plaintiffs bring this suit in their names, on behalf of themselves and all the other stockholders of the Seven Stars Gold Mining Company in like estate or condition with plaintiffs;
160 that before the bringing of this suit, plaintiffs, as such stockholders, demanded of the directive officers and directors of said gold company, that they should direct and cause suit to be brought in the name of said gold company against the said Lawler and Wells on account of their acts and doings in the premises and they refused so to do; that the plaintiffs made a like demand upon said receiver and he refused so to do; that from the last-mentioned date (August 17th, 1892) until on or about the first day of June, 1893, the said gold company was in full possession, control and management of said mines and mining property; that the said Lawler and Wells had no right in law or in equity to receive any of the proceeds derived from the sale of the stock of said gold company; that the said Lawler and Wells asserted, pretended and gave out that they took possession of said mining property under and by virtue of a secret agreement (meaning thereby the agreement between these defendants and one Charles Cowland bearing date May 12th, 1892, a true copy whereof is hereto attached and marked "Exhibit A," and is made a part hereof as though fully written at length herein); that the said Lawler and Wells did not on September 9th 1893, have the right to give out or assert that under the conditions of the agreement of May 12th, 1892, they could retake possession of the said mines and mining property; that the said Lawler and Wells, and each of them, is or are in equity estopped as against themselves and in favor of the said plaintiffs, and others in like estate,
161 from disputing or questioning full title to said mines and mining property in the said gold company, and from disputing or questioning its right to have and hold full possession thereof, and its right to operate and conduct the business thereof in the development and working of said mines and mining properties, and in receiving the entire proceeds thereof and using the same for the benefit of its stockholders and *bona fide* creditors, and that they and each of them, are now likewise estopped from asserting any title therein or thereto, or the right of possession thereof, or the right to control the same, or to collect against the same, or against the said gold company, by suit or in any manner any further purchase-money, and from claiming that any part of the purchase or contract price for the said mines and mining properties, or any part thereof, remains due to the said Lawler and Wells; that the said Lawler and Wells had no right in law or in equity to receive the proceeds of the operation of said mines and mining properties from the said gold company; that the said gold company is entitled to have, receive and recover the sums and sums of money paid to said Lawler

and Wells on account of the purchase price of said mining properties.

J. F. WILSON,
HERNDON & NORRIS,
E. M. SANFORD,
*Attorneys for Defendants Lawler and Wells.*

162 That said John Lawler and Ed. W. Wells, by way of cross-complaint, complain of the plaintiffs, and of each of them, and of all others for whom plaintiffs claim to be acting, in like estate with the plaintiffs named in the above-entitled action, and likewise of The Seven Stars Gold Mining Company, The Industrial Mining and Guaranty Company and John Griffin, codefendants herein, and say:

That the residence of the respective parties to this cross-complaint are as alleged by plaintiffs in their amended complaint herein.

That on the 12th day of May, 1892, the said Lawler and Wells were tenants in common and the owners of, and in the possession of, all those certain mines, mining properties and property described in the amended complaint herein, and more fully described in Exhibit B hereto attached, and the muniments of title evidencing such ownership were on that day of record in the office of the county recorder of the county of Yavapai, Territory of Arizona, in which said mines and mining properties were then and are now situated.

That on or about the fifteenth day of April, 1892, one Hulbert H. Warner opened negotiations with the said Lawler and Wells for the purchase of the Hillside group of mines and property more particularly described in said Exhibit B, which negotiations continued from time to time to and until May 12th, 1892; that as the
163 result of such negotiations four hundred and fifty thousand dollars ($450,000.00) was fixed as the purchase price of said property, and certain portions thereof were to be paid in cash and the remainder upon deferred payments as more particularly set forth in Exhibit A hereto attached; that at the special instance and request of the said Warner the said negotiations were reduced to writing in the name of said Lawler and Wells and one Charles Cowland; that the said Cowland and the said Lawler and Wells thereupon signed a certain instrument of writing called an escrow agreement, a true copy whereof is hereto attached marked Exhibit A and made a part hereof; that contemporaneously with the signing of said escrow agreement the said John Lawler and Ed. W. Wells and Rosa Wells, the wife of said Ed. W. Wells, signed and acknowledged a certain indenture referred to in said escrow agreement as being annexed thereto, and a true copy of which said deed is hereto attached marked Exhibit B and made a part hereof as though fully written at length herein; that contemporaneously with and as a part of the consideration for the said Lawler and Wells permitting said escrow agreement to run to and in the name of said Charles Cowland, the said H. H. Warner did make and deliver to the said Lawler and Wells his certain written obligation, a true copy whereof is hereto attached marked Exhibit C and made a part hereof as

though fully written at length herein; that immediately thereupon, and to wit: upon the twelfth day of May, 1892, with the
164 knowledge and consent of said Warner, and at his instance and request, the said escrow agreement and the said escrow deed referred to in said escrow agreement were deposited in the Bank of Arizona, at Prescott, Arizona, as escrow holder of said papers, the same to be surrendered or delivered up under the terms, conditions and forfeitures specified in said escrow agreement.

That on the fifteenth day of June, 1892, at the instance and request of the said H. H. Warner, a charter was issued under and by virtue of the laws of the State of New Jersey to the Industrial Mining and Guaranty Company (hereby designated and hereinafter referred to as the "guaranty company") as a corporation, and thereafter, and on that day, the said guaranty company was organized with the said H. H. Warner as president and a director thereof.

That on the fifteenth day of June, 1892, and after the organization of said guaranty company, the said Cowland executed to the said guaranty company an instrument in writing, a true copy whereof is hereto attached marked Exhibit D, and made a part hereof as though fully written at length herein; that contemporaneously with the execution and delivery of said instrument, the original of Exhibit D, to said guaranty company, the said Cowland made and delivered his certain indenture of writing to the said guaranty company, a true copy whereof is hereto attached marked Exhibit E, and made a part hereof as though fully written at length
165 herein; that contemporaneously with the execution of the originals of said Exhibits D and E, the said Warner made his certain agreement in writing endorsed on the original of said Exhibit D, a true copy of which said Warner's writing is hereto attached and marked Exhibit F and made a part and parcel hereof, which said writings, to wit: the originals of said Exhibits D, E, and F were received by the said guaranty company with full knowledge and notice of and subject to the terms, conditions, forfeitures, and penalties contained in the original of said escrow agreement, Exhibit A.

That on August thirteenth 1892, the said Warner, then being the president of the said guaranty company, did make his certain agreement in writing with said Cowland and with a proposed corporation to be organized under the laws of the State of New Jersey to be named the Seven Stars Gold Mining Company, a true copy of which said agreement is hereto attached and marked Exhibit G and made a part hereof as though fully written at length herein. That on August 16th, 1892, there was issued under and by virtue of the laws of the State of New Jersey a charter to the Seven Stars Gold Mining Company, hereby and hereinafter designated as the gold company; that afterwards and on the 17th day of August, 1892, the said gold company was organized with the said H. H. Warner as its president and a member of its board of directors.

That on the tenth day of September, 1892, the board of directors of said guaranty company adopted a resolution with the
166 knowledge and consent of said Warner, he then being the president and a director of said guaranty company and said

gold company, a true copy of which said resolution is hereto attached and marked Exhibit H and made a part hereof as though fully written at length herein.

That afterwards and on the tenth day of October, 1892, the said H. H. Warner entered into negotiations with the said Lawler and Wells for the purpose of obtaining an extension of payments about to become due under the provisions of said original escrow agreement, Exhibit A; that as the result of said negotiations, the said Lawler and Wells made and delivered to the said H. H. Warner, he then being president of said gold company, a certain agreement in writing, a true copy whereof is hereto attached and marked Exhibit I and made a part hereof as though fully written at length herein.

That afterwards and on or about the twelfth day of May 1893, the said Warner, he then being the president of said gold company, did enter into negotiations with the said Lawler and Wells for the purpose of obtaining an extension of certain payments about to become due under the provisions of said original escrow agreement, Exhibit A; that as a result of said negotiations the said Lawler and Wells made and delivered to the said Warner a certain other writing, a true copy of which is hereto attached and marked Exhibit K and made a part hereof as though fully written at length herein.

167 That by said contract Exhibit A it was expressly agreed by and between said Lawler and Wells and said Cowland, he then acting at the instance and request of and in the place and stead of said Warner, that in case of the failure of said Cowland, his heirs or assigns, to make, or cause to be made, any of the payments provided for in said contract, Exhibit A, at the time or times or in the manner therein stated, that on the demand of the said Lawler and Wells the said Bank of Arizona should deliver the said escrow agreement back to the said Lawler and Wells.

It was further expressly agreed that in the event of the failure of the said Cowland, his heirs or assigns, to make or cause to be made any or all of said payments as in said escrow agreement agreed to be made, and within the time therein agreed, all payments of money theretofore and thereunder made by said Cowland, his heirs or assigns, would become forfeited to and retained by the said Lawler and Wells as liquidated damages accruing to them on account of and because of such failure of payments, and that the said Lawler and Wells would be released and discharged from any obligation to convey said property by deed, or otherwise, to the said Cowland, his heirs or assigns, and in case of any such forfeiture on the part of the said Cowland, his heirs or assigns, as aforesaid, it was expressly agreed that the rights of said Cowland, his heirs and assigns,
168 to occupy and operate said mines and mining property should at once cease and terminate.

It was also in and by said escrow agreement stipulated and agreed that the said Cowland, his heirs or assigns, should occupy said mines subject to the legal possession of these defendants, and that all the proceeds of said mines should be the property

of said Lawler and Wells and placed to their credit as a part payment on the purchase price of said property, all of which will more fully appear by reference to the said escrow agreement, a copy of which is attached hereto and marked Exhibit A.

That on or about the thirteenth day of May, 1892, and after the placing of said original escrow agreement and deed, Exhibits A and B hereto attached, in the said Bank of Arizona in escrow as aforesaid, the said Cowland, with the knowledge and consent of the said Warner did enter upon the said mines and property described in said Exhibit B, and began the operation of the same, and so continued to operate the same under the name of the "Hillside Mining Company" until on or about the twentieth day of September, 1892, at which time the said Seven Stars Mining Company, organized as aforesaid, and while the said Warner was president thereof and a director therein, and then well knowing the terms and conditions of said escrow agreement and deed, Exhibits A and B, and under and by virtue of the terms, conditions, provisions, penalties and forfeitures of the originals of said escrow agreement and deed,

169 Exhibits A and B, and claiming to act as the assignee of said escrow agreement from the said Cowland as assignor, did enter upon said mines and mining properties and take possession of the same, and other properties described in said Exhibit B, and thereafter did continue to possess, use and operate the same, and obtained ores therefrom which were disposed of by said gold company, and the proceeds thereof, with the knowledge and consent of said gold company, and at its instance and request, were paid to the said Lawler and Wells as a part of the purchase price of the property described in said Exhibit B; and under and by virtue of, and in attempted compliance with, the provisions of the original escrow agreement, Exhibit A, hereto attached, the said gold company did continue such operations until on or about the fifth day of July, 1893, when the said gold company stopped its operations of said property.

That between the twelfth day of May, 1892, and the first day of August, 1893, inclusive, there was paid by the said Cowland, while he was in possession of and operating said property, and by the said gold company as the successor of said Cowland in the possession and operation of said property, and while it was so in the possession and in the operation of said property, claiming the right so to do as the assignee and successor in interest of the said Cowland under the original of said escrow agreement, Exhibit A, to the said Lawler and Wells under said original escrow agreement, Exhibit A,

170 and said supplemental agreement, Exhibit K, the sum of two hundred and seventeen thousand, five hundred and eighty-four and $\frac{55}{100}$ dollars ($217,584.55), the same being all the partial payments up to and including the first day of August 1893, and no further; that the partial payments payable to the said Lawler and Wells after the first day of August, 1893, as the remainder of the purchase price of said property amounts to the sum of two hundred and thirty-two thousand, four hundred and fifteen and $\frac{45}{100}$ dollars ($232,415.45), no part of which has ever been paid by the said gold

company, the said Cowland or any one acting in their behalf; that the interest accumulated from the dates when said partial payments were to be made on said sum remaining due and unpaid amounts at this time to the sum of one hundred and twenty-three thousand, nine hundred and fifty-three dollars, no part of which has been paid by said Cowland, said gold company or any one in their behalf.

That the said gold company and the said Cowland, nor any one for them, did not make the payment of the sum of four thousand, five hundred dollars ($4,500.00) as a part of the purchase price of said property, payable on the first day of September, 1893, and because of the failure, neglect and default of said Cowland, and his assigns, successor in interest or assignee, the said gold company, in such payment, the said Lawler and Wells thereafter continued to maintain and hold, and do now maintain and hold, legal
171 possession of the property described in Exhibit B; that a few days after the first day of September, 1893, default having been made in the payment coming due on September first, 1893, as aforesaid, the said Lawler and Wells, under the provisions, terms, forfeitures and penalties contained in the original of the said Exhibit A, and the deed annexed thereto, the original of said Exhibit B, demanded of, and the said bank, because of said terms, conditions, forfeitures and default of payments, as aforesaid, did then and there, in accordance with the terms of said escrow agreement, return and redeliver the deed mentioned in said escrow agreement, to wit: the original of Exhibit B, to the said Lawler and Wells.

That since the first day of September, 1893, the said Lawler and Wells have kept and maintained the said mining property from deterioration, serious damage and destruction and in good order, and in so doing they were and have been compelled to pay, lay out and expend divers sums of money aggregating the sum of ten thousand dollars ($10,000.00), so as to preserve said property intact and to keep the same in repair for continuous operation as a workable mine; that the said Cowland and his successor in interest and assignee, to wit, the said gold company, have not paid the taxes on the said property for the years 1893, 1894, 1895, and 1896, as in and by the terms of said original escrow agreement the said Cowland, his heirs and assigns were, and are, required to pay. That the said Lawler and Wells, in order to protect their said interests and
172 title, and to prevent the said property from being sold for taxes, did pay the taxes upon the said property for said years amounting to the sum of seventeen hundred and sixty-six and $\frac{53}{100}$ dollars ($1766.53).

The said Lawler and Wells further say: That the said Cowland or his successor in interest or his assignee or said gold company, or any one on their behalf or the behalf of either of them, has not offered to pay the said Lawler and Wells all or any portion of said unpaid purchase-money or any interest thereon or any part thereof, or the amount so paid out by said Lawler and Wells for said taxes, as aforesaid, or any part or portion of said taxes, nor has any one on behalf of said Cowland or said gold company offered to reimburse said Lawler and Wells for any part or portion of the moneys paid

out as aforesaid by them for keeping and maintaining said property as a workable property.

The said Lawler and Wells further aver, that, notwithstanding that said mines and property are their own absolutely, and notwithstanding the forfeitures and penalties hereinbefore stated, and notwithstanding the trouble and expensive litigation into which said Lawler and Wells have been thrown on account of said failures and defaults, still, that equity may be done, the said Lawler and Wells bring their deed of conveyance in and to all of said mines and property heretofore described, duly executed to the said

173 Cowland, into this court, and tender the same in court, and offer to deliver the same to the said plaintiffs for the benefit of said corporation, and offer to deliver the same together with the possession of all said property and all improvements thereon, on the condition that the plaintiffs, or either of them, or any person or persons for them or on their behalf, shall pay into this court for the benefit of said Lawler and Wells the principal sum of two hundred and thirty-two thousand, four hundred and fifteen and $\frac{45}{100}$ dollars ($232,415.45), unpaid purchase price of said property, and the further sum of one hundred and twenty-three thousand, nine hundred and fifty-three dollars ($123,953.00), the accrued interest on said principal, together with the interest hereafter to accrue on said principal, and together with the sum of seventeen hundred and sixty-six and $\frac{53}{100}$ dollars ($1,766.53), the taxes so paid as aforesaid on said property, aggregating the sum of three hundred and fifty-eight thousand, one hundred and thirty-four and $\frac{94}{100}$ dollars ($358,134.94) shall be paid to the said Lawler and Wells, or into this court for them, on a day certain to be fixed by this honorable court, then these defendants will deliver said deed and possession of said property to the plaintiffs, or to said gold company, or to such party or parties as the court may designate and determine as being entitled to receive the same under the terms of the said original escrow agreement.

174 Wherefore these defendants pray the judgment of this court that the plaintiffs, and those in like estate with them, and all persons claiming any interest in said property and premises under and by virtue of said original escrow agreement, Exhibit A, or some of them, be required to pay, within a reasonable time to be fixed by the court, the said sum of three hundred and fifty-eight thousand, one hundred and thirty-four and $\frac{94}{100}$ dollars ($358,134.94); and in the event of their failure so to do that they be forever estopped, barred and restrained from asserting or claiming any right, title or interest, either in law or in equity, in or to the said mines, mining claims or any portion thereof, or the property mentioned and described in said Exhibit B, or any part thereof, and that the title to the same be decreed to be in these defendants and forever quieted; and for costs of suit, and for such other, further and different relief as may be meet and proper in the premises.

J. F. WILSON,
HERNDON & NORRIS,
E. M. SANFORD,
*Attorneys for Defendants Lawler and Wells.*

175 TERRITORY OF ARIZONA, } ss.
*County of Yavapai,* }

John Lawler being first by me duly sworn deposes and says: I am one of the defendants in the above-entitled action: I have read the fourth ground of defense contained in the foregoing answer, and I know the contents thereof and the facts therein stated are true of my own knowledge.

JOHN LAWLER.

Sworn and subscribed to before me this 13 day of September, A. D. 1897.

My commission expires May 18, 1900.

[SEAL] HARRY E. KAISS,
*Notary Public in and for the County of Yavapai, Territory of Arizona.*

176 EXHIBIT A.

The annexed deed from John Lawler and Ed. W. Wells to Charles Cowland, dated May 12, 1892, conveying the Hillside group of mining claims, being all the mining property known as the "Hillside group," situated in Eureka mining district, Yavapai county, Arizona Territory, is deposited in escrow with the Bank of Arizona, at Prescott, Ariz., and is to be held and delivered by said bank upon the following conditions and those only:

The said bank is hereby directed to deliver the said deed to said Cowland, his heirs or assigns upon his or their paying or causing to be paid into said bank and the Park National Bank of New York City, and the Bank of California at San Francisco, as hereinafter provided for, the full sum of four hundred and fifty thousand dollars ($450,000) as follows:

Twenty thousand dollars ($20,000) to be paid this day by checks for said amount on Denver, Colorado, signed by H. H. Warner, divided as follows: Ten thousand dollars to said Wells and ten thousand dollars to said Lawler;

In thirty days from this date, eighty thousand dollars in cash, with this proviso, however; that said Cowland may, of this $80,000 to be paid within thirty days of the date hereof, pay thirty thousand dollars thereof on said date, and twenty-five thousand dollars on or before six months from this date; that is, the said twenty-

177 five thousand dollars shall be paid at the same time as hereinafter provided for the second payment of the said purchase price; and the balance thereof, to wit, twenty-five thousand dollars shall be paid on or before the twelfth day of May, 1893; that is to say; the said twenty-five thousand dollars, being the balance of the first payment may be made at the time — the third payment of the purchase price hereinafter provided for; it being agreed and understood, however that each of said payments of twenty-five thousand dollars, which are a part of the first payment under this contract, but by a special arrangement, carried over to the second and third

payments, shall bear interest at the rate of ten per centum per annum from the date hereof:

The second payment, to wit, one hundred thousand dollars, in addition to the twenty-five thousand dollars aforesaid, shall be made on the twelfth day of November, 1892:

The third payment, to wit: the sum of one hundred and twenty-five thousand dollars in addition to the second twenty-five thousand dollars as aforesaid, shall be made on or before the twelfth day of May, 1893; and

The fourth payment, to wit, one hundred and twenty-five thousand dollars, (which payments aggregate four hundred and fifty thousand dollars, said purchase price), shall be made on or before the twelfth day of November, 1893.

It being hereby mutually agreed that each and all of said
178 payments shall bear interest from the date hereof until paid at the rate of ten per centum per annum.

It is further agreed and understood that the aforesaid payments shall be made, if not otherwise agreed upon, as follows:

One-third thereof at the Bank of Arizona, at Prescott, Ariz. for the credit of said Lawler and Wells;

One-third thereof at the Park national bank at New York city; and

One-third thereof at the Bank of California, at San Francisco.

The amounts paid in said Park national bank and Bank of California are to be credited to the Bank of Arizona, which said Bank of Arizona is to credit the same to the account of said Lawler and Wells, under this contract.

That the said Cowland has the right to make any or all of said payments before the same are due, as hereinafter specified, and from the date he deposits with any of said banks, any part of said purchase price under this contract, interest on the amount so deposited, shall cease from that date.

In case of the failure of said Cowland to make or cause to be made, any of said payments of money at the time or times and in the manner herein stated, full and complete, then the said Bank of Arizona, upon demand thereof being made by said Lawler and Wells or their representatives, shall, and it is hereby directed to deliver said
179 deed to said Lawler and Wells or their representatives; and in the event of such failure of said Cowland to make or cause to be made any or all of said payments as above stated, then all payments of money theretofore made by said Cowland on the purchase price of said property shall be forfeited by him, and he hereby agrees and covenants to and with said Lawler and Wells that all moneys theretofore paid by him as the purchase-money of said property shall belong to them and shall be retained by them as liquidated damages accruing to them for the failure of said Cowland to purchase, take and pay for said property as hereinabove stated and stipulated. And the said Lawler and Wells shall be at once released and discharged from and further duty or obligation to sell and convey the property mentioned in and described by said deed.

It is further agreed that said Cowland by himself and his agents

may at once enter into and upon said property mentioned and described in said deed and take possession thereof, subject however to the legal possession of said Lawler and Wells, and the said Cowland may use, possess, explore, develop, work and operate the same, and all the proceeds derived from such use, development, operating and working of the same, and from the ores taken therefrom shall at once be paid to said Lawler and Wells, and be applied to and credited upon the payments hereinabove stipulated to be made by said Cowland; they, said Lawler and Wells to notify the said
180 Bank of Arizona of such payments, and such payments to have the same effect as if deposited with the said bank and to be part of the purchase price of said property. And on any amounts so paid, interest thereon shall cease from the date of such payments.

It is further agreed that said Lawler and Wells shall retain and remain in the possession of said property described in said deed, until the full payment of the purchase price and interest as above stated shall be made, and said Cowland hereby recognizes and agrees to such possession, and any and all use made of said property or any part thereof by or on the part of said Cowland, shall be considered as a recognition of said Lawler and Wells' possession as aforesaid, but said Lawler and Wells shall not work the property or operate the said mines, nor shall they work or use the said personal property, nor shall they interfere with the use, working and operation thereof by said Cowland.

It is further agreed that if the said Cowland shall fail to make the payments as above stated, and shall fail to take and pay for said property as above stated, that all improvements made upon said property, and all developments thereon and therein, and all ores taken therefrom, shall be the property of said Lawler and Wells, and shall not be removed by said Cowland, and the cost and expense thereof shall in no manner be a charge against said Lawler and Wells or against said property.]
181 It is further agreed that said Cowland shall have the right to work and operate the mill and machinery and to use all the property, real and personal, mentioned and described in said deed during the continuance of this contract and until a forfeiture thereof on his part. And in case of a forfeiture of said contract on the part of said Cowland, by failure to comply with any of the provisions thereof or to make any payments as herein provided for then he agrees to at once surrender and deliver possession of said property to the said Lawler and Wells.

The said Lawler and Wells hereby covenant, promise and agree to and with the said Cowland that when and at the time of the delivery of said deed to him as above provided, the said property conveyed thereby shall be free and clear from all incumbrance or lien incurred in any manner by them or through them or on their or either of their account, except that they shall not be required to pay any assessment or taxes levied upon or against the property conveyed by said deed since the year 1891.

In witness whereof, the said Lawler and Wells and the said Cow-

land have hereunto set their hands and seals this twelfth day of May, 1892.

JOHN LAWLER. [SEAL.]
E. W. WELLS. [SEAL.]

182 EXHIBIT B.

This indenture made the twelfth day of May, A. D. 1892, between John Lawler, and Ed. W. Wells, and Rosa Wells, his wife, of the city of Prescott in the county of Yavapai and Territory of Arizona, parties of the first part, and Charles Cowland, of the city of Denver, Arapahoe county, Colorado, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four hundred and fifty thousand dollars ($450,000) to them in hand paid by the said Cowland, party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do bargain, grant, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all and singular, the following-described mining claims, situate, lying and being in the Eureka mining district, in the county of Yavapai and Territory of Arizona, viz:

"The Hillside," "Seven Stars," "Happy Jack," "Contact No. 1," "Contact No. 2," and "Camp."

Each and all of said claims were conveyed by patents from the United States to said John Lawler and one Beverly T. Riggs, and by said Riggs to said parties of the first part.

Also all and singular all the right, title and interest, estate, claim and demand, the possession and right of possession of the
183 parties of the first part, of, in and to the following-described mining claims and mining locations, situate, lying and being in the said Eureka mining district, in said county and Territory.

The said claims are upon the public lands of the United States and are held by the parties of the first part by possession, who, by these presents, convey the right, title and interest they and each of them have in and to the same, namely:

The "Midnight," located January 1st, 1892, a record of which location is made in Book 33, records of mines of said county of Yavapai, at page 232;

The "Waterfall," located January 1st, 1892;
"Morning Glory," located January 1st, 1892;
"Water," located January 1st, 1892;
"Hidden Treasure," located January 1st, 1891;
"Sucker," located January 4th, 1891;
"Side," located June 21, 1890;
"Purple Rose," located August 10, 1886;
"Southern Belle," located March 11, 1887;
"Lucky Cuss," located June 23, 1887;
"Robert E. Lee," located June 23, 1887;
"Centipede," and "Good Enough."

Also that certain five-stamp steam quartz mill, situate upon the said

"Side," mining claim and adjacent to said Hillside and "Seven Stars," mining claim, and erected for the purpose of crush-
184 ing and reducing the ores from the said claims; and also all of the machinery, appliances, equipments, appurtenances around, about and in any way connected with said mill, completing the same and used in operating it; all mining, milling and blacksmith tools, implements, appliances and supplies, in, about, around and pertaining to the Hillside mining camp and works; all provisions, goods, wares and merchandise, houses, buildings, water, water rights, easements, rights of way, roads, fences, and improvements upon the mesa lands in use for pasture; kitchen and household furniture belonging to the parties of the first part of, in and around said mining camp and conveyed property; also five freight wagons, two team wagons, and all horses, mules and burros belonging to said parties of the first part and being branded "J L" excepting four horses to be selected by the parties of the first part; the harness belonging to and completing the freight teams.

Also all and singular the sawed, hewn, shaven or split lumber at or around said mining camp and at the camp wood saw-mill camp and vicinity, and the frame or board houses at said camp, belonging to the parties of the first part; one pair of scales at Garland station on the P. & A. C. R. R., and all ores upon the dump at said mining claims, concentrations and tailings at said camp or premises.

Together with all and singular the tenements, hereditaments, and appurtenances, dips, spurs and angles, rock, ores and earth, timber and water, in and about and around said described property
185 and premises belonging or in anywise appertaining.

To have and to hold all the above mentioned and described property and premises unto the said party of the second part, his heirs and assigns forever.

And the said parties of the first part do*th* hereby covenant that they have the fee-simple title to the Hillside, Seven Stars, Happy Jack, Contact No. 1, Contact No. 2 and Camp mining claims, and they do further covenant with the said Charles Cowland and his legal representatives and assigns that said mining claims last mentioned are free from all incumbrances and that they will, and their heirs, executors and administrators shall warrant and defend the same to the said Charles Cowland, his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever, except as against taxes since the year 1891.

In witness whereof, the parties of the first part have hereunto set their hands and seals the day and year first — written.

JOHN LAWLER.
ED. W. WELLS.
ROSA G. WELLS.

TERRITORY OF ARIZONA, } ss:
*County of Yavapai,* }

Before me —— ——, a notary public in and for the county of Yavapai aforesaid, on this day personally appeared John
186 Lawler, Ed. W. Wells and Rosa G. Wells, wife of the said Ed. W. Wells, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration therein expressed.

And the said Rosa G. Wells, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Rosa G. Wells, acknowledged, the said instrument to be her act and deed and declared that she had signed the same for the purpose and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this twelfth day of May, 1892.

—— ——,
*Notary Public.*

187 EXHIBIT C.

Whereas Charles Cowland of Denver, Colorado has this day entered into an agreement with John Lawler and Ed. W. Wells of Prescott, Arizona, concerning the purchase of the "Hillside" group of mines and certain other property in Yavapai county, Arizona at the price and sum of four hundred and fifty thousand dollars; and

Whereas the said Lawler and Wells have placed in the Bank of Arizona in escrow, a deed conveying said property to said Cowland, which said deed is to be held and delivered by said bank, subject to the terms and conditions of said contract and agreement between said Lawler and Wells and said Cowland:

Now therefore in consideration of the premises and of the sum of one dollar in hand paid to H. H. Warner, of Rochester, N. Y., by the said Lawler and Wells, he, the said H. H. Warner does hereby guarantee that the said Charles Cowland will faithfully carry out and perform the conditions of said contract on his part.

It being distinctly understood and agreed however, that the said H. H. Warner does not bind himself any further than the said Cowland himself is bound by the terms of said contract, and *if* the said Warner is not bound to do or perform, nor does he guarantee that the said Cowland will do or perform any other or further thing than he is bound to do under the terms and conditions of said contract.

188 In witness whereof the said Warner has hereunto set his hand and seal this twelfth day of May, 1892.

H. H. WARNER. [SEAL.]

Attest:

J. C. HERNDON.
A. J. HERNDON, JR.

189 EXHIBIT D.

Know all men by these presents, that I, Charles Cowland of Denver, Colorado, for and in consideration of the sum of four hundred thousand dollars, to me in hand paid by the Industrial & Mining Guaranty Company, a corporation of the State of New Jersey, the receipt whereof is hereby acknowledged, have bargained and sold, granted and conveyed, and by these presents do bargain and sell, grant and convey unto the said Industrial & Mining Guaranty Company, its successors and assigns, all my right, title and interest, of in and to a certain agreement bearing date, 12th day of May, 1892, and made between John Lawler and Ed. W. Wells, and me the said Charles Cowland, together with all my right title and interest in the mining property known as the "Hillside group" situated in Eureka district, Yavapai county, Arizona Territory, and which *it* is intended to be conveyed to me under and by virtue of a certain deed of conveyance, made by the said John Lawler and Ed. W. Wells and —— Wells his wife as parties of the first part, and me, the said Charles Cowland as party of the second part, which deed bears date May 12th, 1892, and is deposited in escrow with the Bank of Arizona, at Prescott, Arizona, and is to be delivered by said bank up only on the conditions mentioned and provided for in the said agreement, first hereinabove mentioned. Also all right, title and interest I may have to any monies or payments already made by me, or for me under said agreement, also all privileges, grants or other
190 rights whatsoever which I may have, be entitled — or possess under the said agreement, first hereinabove mentioned. To have and to hold all of the same unto the said Industrial & Mining Guaranty Company, its successors and assigns, and as fully and to the same effect as I have or hold said mining properties or any right, interest or privileges granted unto me under the agreement, first hereinabove mentioned, as though these presents had not been executed.

And I hereby constitute the said Industrial & Mining Guaranty Company, my true and lawful attorney irrevocable for me and in my place and stead, to receive said deed and obtain said conveyance in its own name or otherwise as it may desire, and to take or institute any and all proceedings or actions as it may deem proper to procure and obtain said deed and possession of the said mining properties, and to carry out and perform all covenants, conditions and agreements by me to be carried out and performed under said agreement, first hereinabove mentioned.

I covenant and agree for myself, my heirs, executors and administrators that said agreement first hereinabove mentioned is in full force and effect, and that none of the terms and conditions thereof have been violated by me, and that I have paid under said agreement the sum of fifty thousand dollars, and that I have not done or suffered to be done, any act or deed whereby the said mining properties, or any of the properties intended to be conveyed to me
191 by said deed have been in anywise encumbered, neither have I granted conveyed or sold the same or any part thereof.

It is expressly understood and agreed by and between the parties hereto that this sale and transfer is made by me, the said Charles Cowland, to the said Industrial & Mining Guaranty Company subject to all the covenants, conditions and agreements contained in the deed of conveyance made by the said John Lawler and Ed. W. Wells and his wife to me, the said Charles Cowland, dated May twelfth, 1892, and which are to be carried out and performed on my part, and which said covenants, conditions and agreements the said Industrial & Mining Guaranty Company hereby agree to carry out and perform, and said company also agree to make all of the payments in said agreement provided for; it being understood that the said deed of conveyance referred to and mentioned in said agreement is deposited in Arizona, with the Bank of Arizona, at Prescott, Arizona, and is not to be delivered by said bank up until all of the conditions in the said agreement are fully complied with; and this assignment is made subject to the performance and carrying out of these conditions, covenants and agreements by said company.

CHARLES COWLAND. [SEAL.]

Witness:
R. S. HUDSPED.

192 EXHIBIT "E."

I, Hulbert H. Warner, the undersigned, hereby consent to the making of the conveyance by the said Charles Cowland to the Industrial & Mining Guaranty Company, and the above assignment; the guarantee that I have heretofore made for the said Charles Cowland to apply to and continue with the said Industrial & Mining Guaranty Company the same as though said deed of conveyance and assignment had never been made by the said Charles Cowland.

Dated June 15, 1892.

H. H. WARNER. [SEAL.]

Witness:
R. S. HUDSPED.

STATE OF NEW YORK, *City and County of New York,* } *ss:*

On this fifteenth day of June A. D. eighteen hundred and ninety-two, before me the undersigned a notary public in and for the city and county of New York and State of New York, personally appeared Charles Cowland and Hulbert H. Warner same personally known and who severally acknowledged to me that he the said Charles Cowland had signed and executed the foregoing instrument of assignment and he the said Hulbert H. Warner the foregoing consent and agreement both for the uses and purposes in the several instruments expressed.

JAMES S. J. MORRIS,
*Notary Public No. 70, N. Y. Co.*

[SEAL.]

193 EXHIBIT F.

This indenture, made this fifteenth day of June, A. D. 1892, between Charles Cowland, of the city of Denver, Arapahoe county, Colorado, party of the first part, and the Industrial & Mining Guaranty Company, a corporation of the State of New Jersey, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of four hundred thousand dollars ($400,000) to him in hand paid by the said company, party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these presents doth bargain, grant, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all and singular the following-described mining claims, situate, lying and being in the Eureka mining district, in the county of Yavapai and Territory of Arizona, viz:

The "Hillside," "Seven Stars," "Happy Jack," "Contact No. 1," "Contact No. 2" and "Camp."

Each and all of said claims were conveyed by patents from the United States to one John Lawler and one Beverly T. Riggs, and by said Riggs to said Lawler and Ed. W. Wells.

Also all and singular all the right, title and interest, estate, claim and demand, the possession and right of possession of the
194 party of the first part of, in and to the following-described mining claims and mining locations, situate, lying and being in the said Eureka mining district in said county and Territory.

The claims are upon the public lands of the United States and are held by the party of the first part by possession, who, by these presents, conveyes the right, title and interest he has in and to the same, namely:

The "Midnight," located January 1st, 1892, a record of which location is made in Book 33, records of mines of said county of Yavapai at page 232;

The "Waterfall," located January 1st, 1892;

"Morning Glory," located January 1st, 1892;

"Water," located January 1st, 1892;

"Hidden Treasure," located January 1st, 1891;

"Sucker," located January 4th, 1891;

"Side," located June 21, 1890;

"Purple Rose," located August 10, 1886;

"Southern Belle," located March 11, 1887;

"Lucky Cuss," located June 23, 1887;

"Robert E. Lee," located June 23, 1887;

"Centipede" and "Good Enough."

Also, all that certain five-stamp steam quartz mill situate upon the said "Side" mining claim and adjacent to said "Hillside" and
"Seven Stars" mining claims, and erected for the purpose of
195 crushing and reducing the ores from the said claims; and also all of the machinery, appliances, equipments, appurte-

nances around, about and in any way connected with said mill, completing the same and used in operating it; all mining, milling and blacksmith tools, implements, appliances and supplies in, about, around and pertaining to the "Hillside" mining camp and works; all provisions, goods, wares and merchandise; houses, buildings, water, water rights, easements, rights of way, roads, fences and improvements upon the mesa lands in use for pasture; kitchen and household furniture belonging to the party of the first part of, in and around said mining camp and conveyed property; also five freight wagons, two team wagons and all horses, mules and burros belonging to said party of the first part and being branded "J L," and the harness belonging to and completing the freight teams.

Also, all the sawed, hewn, shaven or split lumber at and around said mining camp and at the camp wood saw-mill camp and vicinity, and the frame or board houses at said camp belonging to the party of the first part; one pair of scales at Garland station on the P. & A. C. R. R., and all ores upon the dump at said mining claims, concentrations and tailings at said camp or premises.

Together with all and singular the tenements, hereditaments, and appurtenances, dips, spurs, and angles, rock, ores and earth, timber and water in and about and around said described property
196 and premises belonging or in anywise appertaining.

To have and to hold all of the above mentioned and described property and premises unto the said party of the second part, his successors and assigns forever.

And the party of the first part doth hereby covenant that he has the fee-simple to the "Hillside," "Seven Stars," "Happy Jack," "Contact No. 1," "Contact No. 2" and "Camp," mining claims; and he doth further covenant with the said Industrial & Mining Guaranty Co., its legal representatives and assigns that said mining claims last mentioned are free from all incumbrances, and that they will and his heirs, executors and administrators shall warrant and defend the same to the said Industrial & Mining Guaranty Co. and its assigns forever against the lawful claims and demands of all persons whomsoever, except as against taxes since the year 1891.

In witness whereof the said party of the first part hereto has hereunto set his hand and seal the day and year first above mentioned.

CHARLES COWLAND. [SEAL.]

Witness:
R. S. HUDSPED.

STATE OF NEW YORK, }
*City and County of New York,* } ss:

On this fifteenth day of June, A. D., 1892, before me, the undersigned, a notary public in and for the city and county of
197 New York and State of New York, personally appeared Charles Cowland, to me personally known to be the individual whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and considerations therein expressed.

Given under my hand and seal of office this fifteenth day of June, A. D. 1892.

[SEAL.]

JAMES S. J. MORRIS,
*Notary Public, No. 70, N. Y. Co.*

198 EXHIBIT G.

The undersigned hereby engages, with Charles Cowland and with the Seven Stars Gold Mining Company a corporation about to be formed, under the laws of the State of New Jersey, for the purposes of acquiring certain mines, mining rights, and mining properties from said Charles Cowland through the Industrial & Mining Guaranty Company to take one hundred thousand shares (100,000 shares) of the capital stock of the Seven Stars Gold Mining Company at the par value of five dollars ($5.00) per share and to pay, for such shares as called upon by the said Seven Stars Gold Mining Company.

It is further stipulated that the capital stock of said Seven Stars Gold Mining Company shall be three million dollars ($3,000,000) divided into six hundred thousand shares (600,000 shares) at five dollars ($5.00) each.

It is understood that the undersigned, engages to take said one hundred thousand shares (100,000 shares) of the capital stock of the said Seven Stars Gold Mining Company in order to assure the success of said company and the acquirement of said mines, mining rights, and mining properties from the said Charles Cowland and that sufficient moneys will be raised to pay for such properties and rights.

Dated August 13th, 1892.

H. H. WARNER.

Witness:
H. J. FOOTNER.

199 EXHIBIT H.

SATURDAY, *Sept. 10th*, 1892.

On the call of President H. H. Warner a special meeting of the directors of the Industrial & Mining Guaranty Company was held this afternoon at 2.30 p. m. at the office of the company, No. 41 Broadway.

Present: H. H. Warner, W. R. Kennard and William M. Earl.

Absent: Charles Cowland and F. B. Bowen.

The reading of the minutes of the previous meetings was waived.

On motion of Mr. Kennard, seconded by Mr. Earl, the following was offered:

"Be it resolved that the Industrial & Mining Guaranty Co. sell "and convey all their right, title and interest in the Seven Stars, "Happy Jack, Contact No. 1 and Contact No. 2, mines, also in the "claim known as Camp and in the locations known as the Mescal, "Elwood, Midnight, Waterfall and Boulder, and all their right, title "and interest in the 160 acres of land at Camp Wood, including

"town site and water rights, to a company formed or to be formed,
"and known as the Seven Stars Gold Mining Co., upon said com-
"pany showing that it has placed two hundred thousand dollars
"($200,000) for working capital and upon receiving two million
"eight hundred thousand dollars ($2,800,000) in cash or stock of the
"said Seven Stars Gold Mining Co. This company do hereby
"authorize, instruct and empower the officers of the Indus-
200 "trial & Mining Guaranty Co. to sign the necessary contracts
"and to deliver deeds of the same upon compliance with
"above conditions."

There being no further business, meeting adjourned.

WM. M. EARL, *Secretary.*

EXHIBIT "I."

Whereas under that certain agreement entered into between John Lawler, Ed. W. Wells and Charles Cowland, dated May 12, 1892, regarding the sale of the Hillside group of mining claims, situate in Eureka mining district in the county of Yavapai and Territory of Arizona, to said Cowland to which agreement reference is hereby made, the sum of one hundred and twenty-five thousand dollars and interest thereon from the 12th day of May, 1892, at the rate of ten per cent. per annum became due and payable to said Lawler and Wells.

It is therefore hereby agreed by said Lawler and Wells that the said Cowland may have to and until December, 12, 1892, to pay all of said principal and interest over and above the sum of $93,500. Said Lawler and Wells hereby extending the time to the 12th day of December, 1892, for the payment of the balance of said principal and interest, after the said Cowland pays said amount of $93,500 and only in case said Cowland pays said amount of $93,500 on said
12th day of November, 1892, shall said extention take
201 effect.

It is to be understood however, that by extending the time of payment aforesaid no rights, privileges or advantages are lost or gained by either said Lawler and Wells or Cowland by reason thereof or that the terms or conditions of said agreement shall in any manner be altered changed or affected by said extention, and that said balance shall be considered due and payable on said 12 day of November, 1892, and in case of failure to pay said balance as aforesaid, said Lawler and Wells reserve and shall have the same rights and advantages as if said extention had not been made.

It is also understood and agreed that the payment of $25,000 which was carried over under and by said agreement from the time of the first payment thereunder to the 12th day of May, 1893, shall be paid by said Cowland, with the interest thereon, to said Lawler on the 12th day of February, 1893.

October 28, 1892.

JOHN LAWLER.
ED. W. WELLS.

202 EXHIBIT "J."

We the undersigned agree that the payment of money coming due to us and each of us from Charles Cowland on the twelfth day of November, 1892, under and in pursuance of that certain agreement made by and between us and the said Cowland on the 12th day of May, 1892, regarding the sale by us to him of the Hillside group of mining claims situate in Eureka mining district in the county of Yavapai, Arizona.

And also all money coming due and to be paid to us and each of us in pursuance of that agreement made by us on the 28th day of October, 1892, extending and fixing the time in which to pay portions of the purchase-money of said mining claims, may be made by the said Cowland to the Bank of Arizona, at Prescott, Arizona, and we hereby modify the said agreements so far as to authorize the said Cowland to pay the whole amount of said money due and owing under said agreement into said bank to the credit of Lawler & Wells in place of making the same payments at the Park national bank at New York, and the Bank of California at San Francisco, California, as provided in said agreements. And we hereby agree to receive such payment at said Bank of Arizona, as a performance by said Cowland of so much of the conditions of payment contained in said agreements. No other change or modification shall be regarded as being made in said agreements, the only purpose of this memorandum being to change the place of said payments.

Prescott Oct. 31st, 1892.

JOHN LAWLER.
ED. W. WELLS.

203 EXHIBIT K.

The agreement or escrow dated May 12th, 1892, between John Lawler, Ed. W. Wells, and Charles Cowland and deposited with the Bank of Arizona at Prescott, Arizona, and attached hereto is hereby changed and modified as follows:

1. The payment mentioned in said agreement to be made on the 12th day of May, 1893, may be made by said Cowland as follows.

Nine thousand and ninety-eight dollars in cash which now stands deposited to said Lawler and Wells at the Bank of Arizona, four thousand five hundred dollars to be paid in cash to said Lawler and Wells at said Bank of Arizona, on the 1st day of June, 1893, and a like sum on the first day of each of the following months, viz: July, August, September, October and November, 1893. And the further sum of one hundred thousand dollars and the interest on the said 3rd payment on said escrow mentioned remaining due, and unpaid on said 12th day of November, 1893.

2. The payment of $125,000 and interest known as the fourth payment mentioned in said escrow, may be made in three equal payments after the 12th day of November, 1893. The said payments may be made two months apart next after and following the said 12th day of November, 1893. This extension of time in

which to make the 3rd and 4th payments mentioned in said escrow is made in consideration of the payment and delivery to said Lawler and Wells of fifty thousand dollars of the guaranteed
204 capital stock of the Seven Stars Gold Mining Company, and other valuable consideration.

It is understood and agreed that none of the terms or conditions of the said escrow are to be changed, abridged or modified in any particular, excepting so far only as to extend the time of payment of the 3rd and 4th payments of said escrow as above stated, and the said payments hereinbefore specified are to be made at the times, and manner stated. And in default of the delivery and payment of said stock as aforesaid at the making and deposit of this agreement with said escrow, or in default of making either or any, or any part thereof of said payments as above stated, said Lawler and Wells shall have and exercise the same rights and privileges in every particular, which they now have under said escrow or agreement, as if such extension of time of payment, on this agreement, had not been made.

And the stock so delivered or paid to said Lawler and Wells, and all sums of money therefor paid to or for them, under and in pursuance of said escrow, and this agreement is, and shall be their property, and held by them and forfeited by said Cowland, or the party paying the same, as liquidated damages for the failure of said Cowland to carry out the payments, and conditions hereinbefore stated, and agreed to.

All ores mined or taken from the property mentioned in said escrow and the proceeds thereof shall continue to belong
205 to said Lawler and Wells, and said proceeds shall be applied to the payment of the amounts hereinbefore stated which said payments shall cease to draw interest when made.

ED. W. WELLS.
JOHN LAWLER.
CHARLES COWLAND.

(Endorsed:) Prescott, Arizona, September 13" 1897. Received this day copy of the within answer and cross-complaint. T. W. Johnston, attorney for plaintiffs. No. 2365. Wiser, Field, *et al. vs.* Lawler & Wells, *et al.* Answer to plaintiffs' amended complaint, and def'ts L. & W.'s cross-complaint. Filed at 2 o'clock p. m. Sep. 13, 1897. J. M. Watts, clerk. Herndon & Norris, J. F. Wilson and E. M. Sanford, attorneys for def'ts Lawler & Wells.

206 TERRITORY OF ARIZONA, } ss:
*County of Yavapai,* }

In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

CLINTON B. WISER ET AL.
*vs.*
JOHN LAWLER and ED. W. WELLS ET AL. } No. 2365.

And now comes John Griffin, one of the defendants herein and hereby enters his appearance as defendant in the above-entitled cause, and for answer to the complaint herein, as amended, this defendant says—that on the fourth day of October, eighteen hundred and ninety-three, he was appointed receiver of the Seven Stars Gold Mining Company, a corporation organized under the laws of the State of New Jersey, by the court of chancery of the State of New Jersey, and forthwith as such receiver took charge of all the books, papers, accounts and effects of said company then being within the State of New Jersey and the jurisdiction of said court; that before the commencement of this suit this defendant as such receiver was requested by the said plaintiffs herein to commence a suit to recover the properties and money in the complaint described, but this defendant was unable to comply with such request by reason of the fact that as such receiver he was without means derived from anything coming to him as such receiver and unable to prosecute the
207 same or pay the expenses thereof; and that he did not obtain possession as such receiver of any properties within the State of New Jersey from which such means or money could be realized.

This defendant further answering submits that this honorable court on decreeing for the plaintiffs should direct that all property, moneys and assets of every kind and description which by said decree the defendants should turn over and pay, should be paid and delivered to this defendant to be administered as a trust for the benefit of the stockholders and creditors of said Seven Stars Gold Mining Company, after deducting the reasonable costs and expenses of this suit.

JOHN GRIFFIN,
*Receiver of the Seven Stars Gold Mining Company, Pro Se.*

(Endorsed:) # 2365. District court of fourth judicial district Territory of Arizona. Clinton B. Wiser, *et al. vs.* John Lawler *et al.* Answer of John Griffin, receiver. Filed September 13th, 1897 at 9 o'clock a. m. J. M. Watts, clerk.

208 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

CLINTON B. WISER ET AL., Plaintiffs, vs. JOHN LAWLER ET AL., Defendants. } No. 2365. Answer of the Plaintiffs in the Original Complaint to the Cross-complaint Filed Herein on the 13th Day of September, A. D. 1897.

And the said plaintiffs in the original complaint, for answer unto the said cross-complant herein, say:

That said plaintiffs admit that on the 12th day of May, 1892, the said Lawler and Wells were tenants in common and the owners of and in the possession of those certain mines and mining property described in the original amended complaint.

Admit the averments in said cross-complaint regarding the negotiation for and execution of the agreements attached to said cross-complaint as Exhibit A; and as to the execution of the indenture referred to in said agreements; and in regard to the execution of the said guarantee of H. H. Warner, and the placing of said agreements and deed in escrow in the Bank of Arizona; but the plaintiffs deny that they, or either of them, or any of the stockholders of the Seven Stars Gold Mining Company in like estate ever had any knowledge or notice of the execution of the said escrow agreements or of the deposit of the same in escrow, until after the wrongful and fraudulent assertion of title and right of possession of Lawler
209 and Wells, in September, 1893, as set forth in the original and amended complaints herein.

Admit the averments regarding the incorporation of the guaranty company, the execution of Exhibits D, E and F to said cross-complaint and the execution of Exhibit G; the averments touching the incorporation of the gold company; the passage of said resolution—Exhibit H; the execution of the agreements of extension marked Exhibits I and K; but these plaintiffs aver, that none of them and none of the stockholders of the Seven Stars Gold Mining Company in like estate, had any knowledge or notice of the execution of any of the said exhibits, or of the passage of the said resolution, or of the acts and doings of the said Warner set forth in said cross-complaint regarding the execution of said instruments and the passage of said resolution, until and after the unlawful, fraudulent and wrongful seizure of the said mining property by Lawler and Wells, as set forth in the complaint herein.

Admit the averments in said cross-complaint regarding the terms of the said escrow agreements and deed and agreements of extension, but these plaintiffs say and aver, that the said Lawler and Wells are, in law and in equity, estopped from claiming any right, title or interest in and to the said mining property by virtue of any terms of the said escrow agreements or deed, or agreements of extension, because of the acts and doings of the said Lawler and Wells
210 in representing and causing to be represented, and authorizing and sanctioning the representation to these plaintiffs, and

each of them, and all of the stockholders of the Seven Stars Gold Mining Company in like estate, that the said Seven Stars Gold Mining Company held the absolute, exclusive and unquestionable title to the said mining property, in the manner, for the purpose and with the effect as charged in the original and amended complaint; and at this point the plaintiffs refer to their original and amended complaint herein, and make all the allegations of their said amended complaint herein touching the estoppel, and grounds of estoppel, of the said defendants, and make the same a part of their answer to the said cross-complaint, with the same force and effect as if all of the said allegations of the said amended complaint were here and now repeated in full.

Admit that the said Cowland and the said gold company went into possession and operated the said property substantially as averred in the said cross-complaint; but deny that the said possession and operation was in anywise subject to the legal possession of Lawler and Wells but aver that the same was the legal and exclusive possession of Cowland and said gold company, and was opened and unquestioned by Lawler and Wells until the date of said unlawful seizure as aforesaid.

Admit that there was paid to the defendants on the alleged purchase price of the said mining property $217,584.55, but these
211 plaintiffs say: that the said payment and payments were wrongfully made to the said Lawler and Wells by the said gold company, and that Lawler and Wells had no right in law or in equity to receive the same from the said gold company, by reason of the estoppel aforesaid.

Deny that there is anything due to Lawler and Wells from the said gold company, or from any of these plaintiffs or other stockholders of the said gold company in like estate on the purchase price of the said mining property, and aver that the said Lawler and Wells are estopped, as above set forth, from claiming that there is anything due to them from the said gold company, or these plaintiffs, or any of them, or any of the stockholders of the said gold company in like estate, on any contract of purchase of the said mines and mining property.

Deny that Lawler and Wells do now maintain and hold legal possession of the property described in Exhibit B, but these plaintiffs allege, that the acts and doings of the said Lawler and Wells in seizing said mines and mining property and asserting right and title thereto by reason of any default under the said escrow agreements, *was* wrongful, unlawful and inequitable, because of the estoppel aforesaid, and that any attempt of Lawler and Wells to insist upon any of the terms, conditions, forfeitures or defaults under the terms of said escrow agreements, is wrongful, unlawful and inequitable, by reason of the estoppel aforesaid.

Deny that Lawler and Wells have paid out $10,000.00
212 "to preserve the said mining property intact," or to keep the same in repair and operate and maintain as a workable property; but these plaintiffs assert that, if they had done so, such payment would inure to the benefit of these plaintiffs, because the

said Lawler and Wells had no right or authority to expend such money, and were never authorized to do so by the said gold company, or by any of these plaintiffs or other stockholders of the said gold company in like estate.

Deny that the said gold company or said Cowland have not paid the taxes on the said mining property for the years 1893, 1894, 1895, and 1896, and say: that the money used by said Lawler and Wells for the payment of said taxes for said years, was the money of the said gold company, and that these plaintiffs are content that in the final settlement of the account between Lawler and Wells and plaintiffs, that the said Lawler and Wells shall be credited with the money so actually paid for taxes on said property.

That as to the averment that the said Cowland has not offered to pay the said Lawler and Wells all or any portion of the said alleged purchase-money, or any interest thereon, or any part thereof, alleged to be due under said escrow agreements, plaintiffs deny the same.

Admit that the said gold company, or these plaintiffs or any of them, or any of the stockholders of the said gold company,
213 have not offered to reimburse said Lawler and Wells for any part or portion of the moneys so alleged to be paid out as aforesaid by them for keeping and maintaining said property as a workable property.

Deny that Lawler and Wells own absolutely the said mines and mining property, or that the said Lawler and Wells have any right, title or interest, in law or in equity, in the said mines and mining property, or any of them, or any part thereof; and these plaintiffs refuse the tender of the said Lawler and Wells in said cross-complaint set forth, and deny that the said Lawler and Wells, or either of them, are entitled to any of the relief prayed for in the said cross-complaint; but, on the contrary, do again aver that they are entitled to the relief prayed for in their amended complaint, by reason of the acts and doings of the said Lawler and Wells therein set forth; and having now answered said cross-complaint fully, plaintiffs pray that defendants take nothing by their cross-complaint, and that plaintiffs be hence dismissed with their costs.

G. W. KRETZINGER &
J. T. KRETZINGER,
M. F. GALLAGHER,
T. W. JOHNSTON,
*Attorneys for Plaintiffs.*

(Endorsed:) 2365. C. B. Wiser, *et al.* — Lawler & Wells. Answer to cross-complaint. Filed September 21st, 1897, at 11.20 a. m. J. M. Watts, clerk. Copy acknowledged 9, 21, '97. J. F. Wilson Herndon & Norris, E. M. Sanford, att'ys for def'ts L. & W.

214 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

WISER ET AL., Plaintiffs,
*vs.*
LAWLER AND WELLS ET ALS., Defendants.

Come now the parties, and on motion to carry into effect the interlocutory order and order of reference this day made and entered in the above cause:

The court orders that E. B. Gage be and hereby is appointed receiver of all the mines, mining properties, machinery buildings, tools, appliances, apparatus, supplies, ore on dumps, and all other property of every kind and nature whatsoever, known as the Seven Stars group of mines, as described in the bill of complaint herein; with full authority to take and receive possession thereof and to keep, preserve and maintain the same from waste, or decay, and subject to the further order of this court; with like authority to make, or have made, an examination of said properties and mines and to make a report as to the condition of the same and the condition of the underground workings of said mines; together with an inventory of all said property; with like authority to employ, have and keep at the said mines and upon said mining prop-
215 erties a custodian or watchman to have constant care thereof;

It is further ordered that John Lawler and E. W. Wells deliver to said E. B. Gage as such receiver and turn over to him all of said mines and mining properties above described, referred to and mentioned, together with all books of account, and papers now in their possession with reference thereto, and especially the books of account and all other books, memoranda and data touching the purchase of machinery supplies or other material or thing, purchased and supplied upon said property, and opened and kept as the books of account thereof and of its operation and the sale of its ores from May 12th, 1892, to this date.

This order to become effective upon the execution of a bond by said E. B. Gage to run to the Territory of Arizona in the penal sum of ten thousand dollars, with security to be approved by the clerk of this court.

It is further ordered that J. D. Carter be, and hereby is, appointed special master, to take an account in this cause and with and between the parties in interest herein:—

First. Showing all moneys paid to or received by said Lawler and Wells for and on account of said property and properties since the 12th of May, 1892, whether the same were received from Warner, from the Industrial Mining and Guaranty Company or from the Seven Stars Gold Mining Company;

Second. All moneys paid for or used in and about the
216 operation of said mines, and for the purchase of machinery, supplies, of every kind and nature whatsoever, from May 12th, 1892, to September 10th, 1893, and from said last date to the date of the entry of this order.

Third. The amount derived from the sale of bullion and ores during the same period last aforesaid, and paid over to Lawler and Wells;

Fourth. The amount of machinery purchased after May 12th, 1892, and attached and sold under attachment for the payment thereof;

Fifth. To ascertain from the books of the Industrial Mining & Guaranty Company, and from the Seven Stars Gold Mining Company, now in evidence in this case, the number of shares of stock in the Seven Stars Gold Mining Company which was subscribed for, the several dates of said subscription, the persons severally subscribing therefor, and the consideration paid for the same, and to report the same to this court not later than the first Monday in January, 1898; and in taking said account, the said special master may consider the accounts of the Hillside Company the Industrial Mining & Guaranty Company and the account of Lawler and Wells as the same appear in the books of the Bank of Arizona, and the books of John Lawler since the 10th day of September, 1893; with full authority in said special master to call for or receive any other proper and material evidence that he may deem necessary, or that the parties to this suit may offer, to aid in said accounting
217 and in making said report, and if necessary to subpœna witnesses for that purpose.

Said special master is further directed, immediately upon the completion of his said report to furnish a copy thereof to G. W. Kretzinger at the city of Chicago, and Herndon & Norris and T. W. Johnston at the city of Prescott, Arizona.

It is further ordered that said receiver is hereby authorized and directed to take and receive all moneys paid realized or collected upon the final decree hereinafter to be entered, and to hold the same subject to the further order of this court.

Dated this 30th day of September, 1897.

By the court,

H. C. TRUESDALE, *Judge*.

(Endorsed:) 2365. C. B. Wiser, *et al. vs.* Lawler & Wells, *et al.* Order appointing E. B. Gage rec. & J. D. Carter master. Filed Sept. 30th, 1897, at 4 o'clock p. m. J. M. Watts, clerk. By Wm. Wilkerson, deputy.

218 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

C. B. WISER ET AL., Plaintiffs,
vs.
LAWLER & WELLS ET ALS., Defendants. } No. 2365.

Whereas on the 30th day of September, 1897, in the above-entitled cause, the court made and there was duly entered the following order, to wit:

"It is further ordered that J. D. Carter be, and hereby is, appointed special master, to take an account in this cause and with and between the parties in interest herein:

First. Showing all moneys paid to or received by said Lawler and Wells for, and on account of, said property and properties since the 12th of May, 1892, whether the same were received from Warner, from the Industrial Mining and Guaranty Company or from the Seven Stars Gold Mining Company.

Second. All moneys paid for or used in and about the operation of said mines, and for the purchase of machinery, supplies, of every kind and nature whatsoever, from May 12th, 1892 to September 10th, 1893, and from said last date to the date of the entry of this order:—

Third. The amount derived from the sale of bullion and
219 ores during the same period last aforesaid, and paid over to Lawler and Wells;

Fourth. The amount of machinery purchased after May 12th, 1892, and attached and sold under attachment for the payment thereof;

Fifth. To ascertain from the books of the Industrial Mining & Guaranty Company, and from the Seven Stars Gold Mining Company, now in evidence in this case, the number of shares of stock in the Seven Stars Gold Mining Company which was subscribed for, the several dates of said subscription, the persons severally subscribing therefor, and the consideration paid for the same, and to report the same to this court not later than the first Monday in January, 1898; and in taking said account, the said special master may consider the accounts of the Hillside Company the Industrial Mining & Guaranty Company and the account of Lawler and Wells, as the same appear in the books of the Bank of Arizona, and the books of John Lawler since the 10th day of September, 1893; with full authority in said special master to call for or receive any other proper and material evidence that he may deem necessary, or that the parties to this suit may offer, to aid in said accounting and in making said report, and in necessary to subpœna witnesses for that purpose.

Said special master is further directed, immediately upon the completion of his said report, to furnish a copy thereof to G. W.
220 Kretzinger at the city of Chicago, and Herndon and Norris and T. W. Johnston at the city of Prescott, Arizona."

And whereas said J. D. Carter, above named and appointed special master, has resigned and left the country, and all parties hereto desire that his place be promptly filled by the court,

It is hereby stipulated between the parties hereto that the court be asked to appoint as special master in said cause to succeed the said J. D. Carter, resigned as aforesaid, Charles P. Hicks of Prescott, Arizona, whose functions and duties shall be prescribed by the

above-quoted order heretofore made by said court and entered herein.

Witness our signatures this, the 8th day of June, 1898.

G. W. KRETZINGER,
M. A. GALLAGHER,
T. W. JOHNSTON,
*Attorneys for Plaintiffs.*

J. F. WILSON,
E. M. SANFORD,
HERNDON & NORRIS,
*Att'ys for Defendants, Lawler & Wells.*

221 In accordance with the foregoing and hereto attached stipulation, it is by the court herein ordered that said Charles P. Hicks be, and he is hereby appointed as special master in said cause to succeed said J. D. Carter, resigned and that the functions and duties of said Charles P. Hicks are described and defined in the above-mentioned order heretofore herein made, which said order, as above stated, is made a part hereof, as if herein fully set forth.

Ordered at Phœnix, Arizona, the 9th day of June, 1898.

WEBSTER STREET,
*District Judge.*

(Endorsed:) 2365. District court, Yavapai county, Arizona. C. B. Wiser, *et al. vs.* Lawler & Wells, *et als.* Stipulation and order. Filed at 10 o'clock p. m. Jun- 13, 1898. J. M. Watts, clerk.

222 In the District Court of Yavapai County, Arizona.

CLINTON B. WISER ET AL., Plaintiffs,
*vs.*
JOHN LAWLER ET AL., Defendants. } Stipulation.

For the purpose of shortening the testimony before the master it is stipulated that under the terms and conditions of the Cowland contract of May 12, 1892, mentioned in the evidence in this case, the defendants Lawler and Wells, received the following sums, to wit:

| | | |
|---|---|---|
| From H. H. Warner, May 12, 1892 | $20,000 | |
| May 24, 1892 | 31,000 | |
| | | $51,000 |

That there was deposited in the various banks hereinafter named and which sums were afterwards and on the day opposite each sum mentioned, by the Bank of Arizona placed to the credit of Lawler & Wells in that bank, on account of the purchase price mentioned in the said Cowland contract:

| | |
|---|---|
| 11-12, '92, Bank of Arizona | $35,000 |
| 11-12, 1892, Park nat. bank, N. Y | 23,500 |
| Dec. 9, 1892, Bank of Arizona | 7,000 |
| Dec. 9, 1892, Bank of Arizona | 12,500 |
| " " " " Cal. S. F | 12,500 |
| 12-9, 1892, Bank of Cal., S. F | 4,500 |
| Feb. 11, 1893, Laidlaw & Co., N. Y. | 4,500 |
| Feb. 11, Bank of Arizona | 1,639.96 |

| | | |
|---|---|---|
| June 5, 1893, Laidlaw & Co., N. Y. | 4,500 | |
| June 5, '93, Laidlaw & Co., N. Y. | 2,200 | |
| Aug. 4, 1893, Bank of Arizona | 4,500 | |
| | | 112,339.8 |

The amount of cash received from ores and bullion from the Hillside group of mines by the Bank of Arizona and placed to the
223 credit of Lawler & Wells on account of the purchase price mentioned in the Cowland contract is as follows:

| | | |
|---|---|---|
| 8- 5, '92, ore | $1,893.50 | |
| 9-12, '92, " | 704.15 | |
| 9-26, '92, " | 14,322.06 | |
| 9-28, '92 | 3,067.90 | |
| | | $19,987.61 |
| 10-17, '92, ore | $169.00 | |
| 10-18, '92, " | 3,161.05 | |
| 10-22, '92, " | 3,575.23 | |
| 11- 1, '92, " | 5,521.30 | |
| 11- 1, '92, " | 104.86 | |
| 11- 7, '92, | 2,486.36 | |
| 11-12, '92, " | 1,994.59 | |
| 12- 9, '92, " | 4,974.00 | |
| 12- 9, '92, " | 435.75 | |
| 12-20, '92, " | 2,178.95 | |
| 12-27, '92, " | 1,875.25 | |
| 12-29, '92, " | 1,046.55 | |
| 1- 9, '93, " | 76.40 | |
| 1-12, '93, " | 172.40 | |
| 1-16, '93, " | 1,538.20 | |
| 1-25, '93, " | 2,197.64 | |
| 1-30, '93, " | 1,227.25 | |
| 2- 4, '93, " | 130.00 | |
| 2- 6, '93, " | 2,017.45 | |
| 2- 6, '93, " | 1,504.50 | |
| 2-11, '93, " | 2,395.45 | |
| 2-16, '93, " | 1,532.95 | |
| 3- 2, '93, " | 1,982.15 | |
| 3- 8, '93, " | 2,255.70 | |
| 3-28, '93, " | 903.90 | |
| 6-10, '93, " | 2,355.37 | |
| | 47,812 25 | |
| | | 67,799.86 |

Aggregate sum received on account of purchase price of mine under Cowland contract ..... $231,139.82

Dated, Prescott, Arizona, June 28, 1898.

G. W. KRETZINGER,
M. A. GALLAGHER,
T. W. JOHNSTON,
*Attorneys for Plaintiffs.*
J. F. WILSON,
HERNDON & NORRIS,
E. M. SANFORD,
*Attorneys for Defendants Lawler & Wells.*

(Endorsed:) Clinton B. Wiser, *et al. vs.* John Lawler *et al.* Stipulation. Pl'ffs' Exhibit # 5 before the master. Filed at 10 o'clock a. m., Jul- 11, 1898. J. M. Watts, clerk.

224 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

CLINTON B. WISER ET AL., Plaintiffs,
vs.
JOHN LAWLER ET AL., Defendants. } Report of Special Master.

In pursuance of an order of this court, made and entered on the 9th day of June, 1898, appointing me, the undersigned, special master, to take an account in the above-entitled cause and with and between the parties in interest therein, and to make report thereon, I do now respectfuliy report to this honorable court as follows:

That I have fully and carefully examined the books of the Industrial Mining & Guaranty Company, and have heard evidence introduced by the plaintiffs and defendants respectively, considering so much thereof as was deemed proper and material to aid in said accounting, and after such examination and due consideration of the evidence as aforesaid, I find as follows:

To the first order of reference of the court:

That the amount of monies paid to or received by Lawler & Wells for and on account of said property and properties since the 12th day of May, 1892, is the sum of $231,139.82c., the same being shown in the ledger account of the Industrial Mining and Guaranty
225 Co. with John Lawler and Ed. W. Wells at page 300 of said ledger, also stipulated by the parties as per Plaintiffs' Exhibit No. 5 before the master; that the sum of $51,000 was received from H. H. Warner, shown by stipulation of parties marked Plaintiffs' Exhibit No. 5 before the master. That the books of the Industrial Mining and Guaranty Company make record of and show the sum of $112,339.96c. having been paid to Lawler and Wells on account of the Cowland contract by the said Industrial Mining and Guaranty Company.

To the second order of reference of the court:

That the amount of moneys paid for or used in and about the operation of said mines, and for the purchase of machinery, supplies, of every kind and nature whatsoever, from May 12th, 1892, to September 10th, 1893, is the sum of $130,223.85c., evidenced by statement of Mr. Hazeltine of the Bank of Arizona, Plaintiffs' Exhibit No. 1 before the master, the books of the Bank of Arizona, the books of the Industrial Mining & Guaranty Company, the books of the Seven Stars Gold Mining Company, Defendant's Exhibit No. 2 before the master, and the deposition of Mr. Hazeltine of the Bank of Arizona given upon the trial of this cause; from the 10th day of September, 1893 to the date of the entry of the order of reference, the sum of $35,658.93c. was put into the operation of said property, evidenced by Defendants' Exhibit No. 6 before the master.

226 To the third order of reference of the court:

That the amount derived from the sale of bullion and ores, and paid over to Lawler and Wells during the same period last aforesaid, is the sum of $67,799.86c., according to stipulation of parties, marked Plaintiffs' Exhibit No. 5 before the master, and the

ledger account of the Industrial Mining and Guaranty Company with John Lawler and Ed. W. Wells at page 300 of said ledger.

To the fourth order of reference of the court:

The amount of machinery purchased after May 12th, 1892 and attached and sold under attachment for the payment thereof, is stipulated by the parties to be the sum of $5,000.00, but was not sold under attachment for payment of machinery, but for debts against the Seven Stars Gold Mining Company.

To the fifth order of reference of the court:

The books of the Industrial Mining & Guaranty Company and the books of the Seven Stars Gold Mining Company make record and show that stock of the Seven Stars Gold Mining Company was sold and cash received therefor in the amount of $254,892.77c.; of this amount the stubs of stock certificate books of the Industrial Mining and Guaranty Company show that the sum of $129,275.72c. was received from American subscribers to the guarantee stock, and that the sum of $2,583.80c. was received from American subscribers to the regular stock.

227 That the journal, cash book and ledger of the Industrial Mining and Guaranty Company make record of and credit the sum of $123,852.33c. as having been received on account of London subscriptions for Seven Stars stock. That no evidence has been presented before the master, whereby an accurate account of the names of the English stockholders, the dates and amounts of their several subscriptions could be obtained.

The following is a list of the names of the American subscribers for stock of the Seven Stars Gold Mining Company together with the dates of subscription and the amount paid in:

| Name of purchaser. | Date. | Amount paid. |
|---|---|---|
| J. M. Ives | 1892, Sept. 28... | $100. |
| S. D. Lee | ... | 2000. |
| Mrs. W. F. Van Sickle | ... | 20. |
| L. E. Dickie | ... | 2. |
| A. H. Grange | ... | 20. |
| M. Burke | ... | 100. |
| J. J. Drennen | Oct. 4... | 100. |
| F. Richardson | ... | 20. |
| B. Goodman | ... | 500. |
| W. D. Wyckoff | ... | 10. |
| J. J. Miller | ... | 20. |
| E. S. Banks | ... | 50. |
| 228 G. W. Patrick | Oct. 4... | 200. |
| W. A. Greene | ... | 70. |
| M. M. Heath | ... | 500. |
| H. C. Batelle | ... | 50. |
| James Cronon | 5... | 20. |
| Newton Howe | ... | 20. |
| D. W. Easton | ... | 100. |
| G. W. May, Jr. | ... | 40. |
| R. Foster & Son | ... | 100. |

| | | | | |
|---|---|---|---|---|
| D. W. Bratton | | 6... | | 5. |
| E. M. Nicholls | | ... | | 100. |
| N. F. Van Sickle | | 7... | | 20. |
| E. J. Banker | | ... | | 100. |
| H. J. McMahon | | ... | | 20. |
| J. A. Polhamins | | ... | | 200. |
| Wilford Archibald | | ... | | 10. |
| John W. Regan | | ... | | 20. |
| E. W. Robinson | | ... | | 2. |
| W. M. Williams | | ... | | 2. |
| F. J. Cogswell | | ... | | 150. |
| G. B. Gurney | | ... | | 25. |
| D. Sherman | | ... | | 250. |
| C. R. Bassett | | ... | | 200. |
| A. P. M. Roome | | ... | | 200. |
| James Wilkinson | | ... | | 50. |
| 229 D. Nevile | Oct. | 9... | | 100. |
| A. L. Butterworth | | ... | | 20. |
| Hugo A. Strong | | ... | | 25. |
| David J. Bannon | | ... | | 10. |
| Jas. Cochran & family | | ... | | 100. |
| Darwin Felter & others | | ... | | 15. |
| L. F. Hewins | | ... | | 200. |
| H. S. Murray | | ... | | 50. |
| F. S. Schwick | | ... | | 30. |
| H. S. Murray | | ... | | 50. |
| F. E. Whipple | | ... | | 5. |
| R. P. Menker | | ... | | 30. |
| W. A. Marshall | | ... | | 10. |
| A. Lender | | ... | | 1000. |
| H. M. Smith | | ... | | 50. |
| G. D. Sweetser | | ... | | 100. |
| T. W. Murray | | ... | | 50. |
| B. C. Averill | | ... | | 40. |
| M. C. Merriman | | ... | | 200. |
| Joseph A. Yard | Oct. | 7... | | 20. |
| C. L. Soule | | ... | | 20. |
| W. S. Hughes | | ... | | 5. |
| H. M. Martin | | ... | | 5. |
| F. A. Ricker | | ... | | 10. |
| T. C. Jones | | ... | | 40. |
| 230 J. L. Fowler | Oct. | 7... | | 10. |
| G. H. Fales | | ... | | 40. |
| F. H. Leonard | | ... | | 20. |
| Joseph Leonard | | ... | | 20. |
| W. W. West | | ... | | 5. |
| Swarthy Brothers | | ... | | 100. |
| P. C. Drumm | | ... | | 40. |
| Johanna C. Shanahan | | ... | | 1. |
| T. Greeham | | ... | | 1. |
| C. C. Legg | | ... | | 1. |

| | | | | |
|---|---|---|---|---|
| | M. I. Dotyv | Oct. | 8... | 200. |
| | R. Prichard | | ... | 20. |
| | G. A. Plunket | | ... | 5. |
| | H. H. Saunders & Son | | ... | 20. |
| | M. Ressler | | ... | 80. |
| | Johanna Ressler | | ... | 100. |
| | R. M. Verdon | | ... | 1000. |
| | Frank Miller | | ... | 100. |
| | A. P. M. Roome | Oct. | 10... | 800. |
| | George Nixon, Jr | | ... | 25. |
| | G. W. C. Shiff | | ... | 100. |
| | M. Carson | | ... | 40. |
| | J. S. Boyd | | ... | 100. |
| | G. W. Waters | | ... | 20. |
| | C. R. Bassett | | ... | 200. |
| 231 | Clifford H. Drumm | Oct. | 10... | 50. |
| | W. H. Dunbar | | ... | 50. |
| | S. G. Lout | | ... | 20. |
| | M. E. Law | | ... | 20. |
| | John R. Wilson | | ... | 20. |
| | —— Colson | | ... | 2 |
| | C. G. Henderson | | ... | 5. |
| | O. O. Cooper | | ... | 20. |
| | J. W. De Vere | | ... | 3. |
| | L. D. Triol | | ... | 10. |
| | C. J. Yost | | ... | 30. |
| | L. H. Myer | | ... | 20. |
| | F. Seniza | | ... | 20. |
| | W. B. Rochester | | ... | 100. |
| | P. H. Dedrick | | ... | 100. |
| | R. Frost | | ... | 10. |
| | A. Stewart | | ... | 20. |
| | F. Warren | | ... | 2 |
| | Kate S. Keith | | ... | 40. |
| | J. Scott Boyd | | ... | 20. |
| | G. S. Barbydt | Oct. | 11... | 100. |
| | C. D. Hubbard | | ... | 10. |
| | Haz. Nat. Bank | | ... | 500. |
| | W. R. Randall | | ... | 100. |
| | Isaac F. Chase | | ... | 20. |
| 232 | A. L. Codert | | ... | 5. |
| | J. W. McGee | | ... | 25. |
| | B. M. Hubbard | | ... | 200. |
| | Edward D. Verey | | ... | 10. |
| | H. Smith | | ... | 13. |
| | H. P. Dilworth | | ... | 30. |
| | R. F. Lyon & Co | | ... | 40. |
| | C. H. Winslow | | ... | 10. |
| | W. V. Wentworth | | ... | 100. |
| | O. J. Whitlock | | ... | 2 |
| | G. L. Owen | | ... | 100. |

| | | | | |
|---|---|---|---|---|
| | F. Kleeburg | | ... | 50. |
| | J. K. Burrage | | ... | 25. |
| | R. J. Went | | ... | 500. |
| | Wm. Trenkamp | | ... | 20. |
| | F. E. Thompson | | ... | 5. |
| | Ward St. John | | ... | 20. |
| | H. J. Smith | | ... | 5. |
| | J. L. Fryburg | | ... | 5. |
| | J. W. Anderson | | ... | 5. |
| | W. Kimmerling | | ... | 20. |
| | Rosenberg Bros. | | ... | 25. |
| | H. Rosenberg | | ... | 5. |
| | L. B. Smith | | ... | 1. |
| | J. E. Simpson | Oct. 11 | ... | 5. |
| 233 | C. E. Adair | | ... | 1. |
| | F. S. Gregory | | ... | 5. |
| | Solomon Youngman | | ... | 2. |
| | James A. Rich | | ... | 20. |
| | Geo. Fuller | | ... | 5. |
| | E. A. McMahan | | ... | 5. |
| | B. S. Binney | | ... | 50. |
| | A. V. Vanderveer | | ... | 8. |
| | J. D. Vanderveer | | ... | 10. |
| | J. C. Shanahan | | ... | 1. |
| | Thos. Guenham | | ... | 1. |
| | O. J. Benham | 10 | ... | 100. |
| | R. P. Gifford | | ... | 100. |
| | J. Littell | | ... | 20. |
| | J. B. Clute | | ... | 500. |
| | Jas. E. Bosworth | | ... | 2. |
| | Wm. Watkins | | ... | 40. |
| | A. T. Parsons | | ... | 20. |
| | R. C. Scherlman (Cash Book, page 26) | | ... | 5. |
| | L. M. Crouch | | ... | 15. |
| | H. Houghton | | ... | 30. |
| | B. S. Soule | | ... | 10. |
| | J. T. Mason | | ... | 10. |
| | W. H. Brady | | ... | 10. |
| | E. W. Bass | | ... | 400. |
| | W. K. Hilton | | ... | 10. |
| 234 | M. C. Chamberlain | | ... | 300. |
| | W. H. Simonson | | ... | 10. |
| | Mrs. J. S. Howard | | ... | 10. |
| | O. J. Benham | | ... | 100. |
| | C. B. Dennis | | ... | 10. |
| | A. D. Morgan | | ... | 20. |
| | G. R. Anderson | | ... | 5. |
| | F. A. Germond | | ... | 5. |
| | W. Morgan | | ... | 20. |
| | Allie Robertson | | ... | 5. |
| | E. G. Miller | | ... | 300. |

| | | | |
|---|---|---|---|
| | K. B. Delano | | 50. |
| | K. A. Iverson | | 10. |
| | J. B. Quinn | | 5. |
| | C. E. Brown | | 5. |
| | F. E. Lee | | 4. |
| | C. Adams | | 10. |
| | L. M. White | | 160. |
| | B. F. McMillan | | 5. |
| | L. C. Nordenberg | | 5. |
| | W. Landon | | 300. |
| | I. H. Dedrick | | 100. |
| | Edward Allen | | 15. |
| | A. S. Thompson | | 2. |
| | Mary P. Heald | | 5. |
| 235 | E. B. Dunham | | 100. |
| | E. B. Jones | | 25. |
| | S. Karnsell | | 5. |
| | E. O. Lingle | | 20. |
| | H. B. Pastorious | | 24.37 |
| | R. F. Gurwood | | 100. |
| | R. M. D. Anderson | | 20. |
| | W. Schaefer | | 60. |
| | B. S. Hale | Oct. 11 | 30. |
| | F. D. Chase | | 2. |
| | J. G. Montgomery | | 5. |
| | L. E. Tarbet | | 2. |
| | Frank Warner | | 8. |
| | F. B. Nye | | 1. |
| | Joseph H. Britton | | 20. |
| | W. A. Cordovan | | 20. |
| | F. W. Haggadorn | | 5. |
| | Ward St. John | | 80. |
| | N. F. Bauerlein | | 50. |
| | Amy Pattin | | 25. |
| | W. E. Williams | | 2. |
| | E. D. Senter | | 250. |
| | Solomon Youngman | | 2. |
| | G. B. Henry | | 10. |
| | Pitts Bros. & Miller | | 5. |
| 236 | N. G. Olds | | 100. |
| | J. Henninger | | 2. |
| | B. H. Riddle | | 3. |
| | T. C. Senior | Oct. 13 | 2. |
| | A. R. Faucher | | 52. |
| | E. L. Kistler | | 25. |
| | K. H. Dodge | | 100. |
| | L. A. McMillan | | 25. |
| | C. D. Hubbard | | 10. |
| | H. B. Conway | | 5. |
| | John H. Ayers | | 5. |
| | W. F. Reed | | 20. |

| | | | | |
|---|---|---|---|---|
| | D. Neville | | ... | 100. |
| | S. P. Lathrop | | ... | 100. |
| | J. P. Curry | | ... | 100. |
| | J. E. Allison | | ... | 20. |
| | M. Tormenstein | | ... | 10. |
| | E. E. Baird | | ... | 5. |
| | L. Cleaver | | ... | 20. |
| | Thos. Golding | | ... | 10. |
| | Henry Thame | | ... | 20. |
| | Frank Healey | | ... | 10. |
| | S. McCowan | | ... | 5. |
| | J. Dennison | | ... | 2. |
| | C. Bentham | | ... | 30. |
| 237 | F. K. Peterson | | ... | 5. |
| | M. F. Brett | | ... | 5. |
| | F. F. Brett | | ... | 5. |
| | T. Berking | | ... | 5. |
| | C. Rose | | ... | 5. |
| | Henry Enneking | | ... | 10. |
| | C. H. Thompson | | ... | 1. |
| | B. H. Hailey | | ... | 5. |
| | J. F. Miller | | ... | 5. |
| | C. M. Field | | ... | 1000. |
| | C. B. Wiser | | ... | 1806.38 |
| | T. B. Squires | | ... | 200. |
| | L. Plath | | ... | 60. |
| | J. A. Freeman | | ... | 20. |
| | H. Schopfflower | | ... | 50. |
| | H. J. Burwash | | ... | 20. |
| | W. A. Childs | | ... | 100. |
| | T. A. Brook | | ... | 100. |
| | John A. Kerr | | ... | 100. |
| | P. J. Konen | | ... | 60. |
| | O. G. McCall | | ... | 500. |
| | J. S. Little | | ... | 30. |
| | C. J. Yost | | ... | 200. |
| | W. J. Meschter | | ... | 200. |
| | F. B. Levis | | ... | 20. |
| 238 | Sub. acc't S. S. G. M. Co. | | ... | 50. |
| | W. K. Lang | | ... | 300. |
| | E. Fredricks | | ... | 60. |
| | Carl Weber | Oct. | 13... | 5. |
| | E. B. Harley | | ... | 19.90 |
| | C. L. Potter | | ... | 200. |
| | —— —— | | ... | 5. |
| | C. R. Lane | | ... | 5. |
| | E. M. Bell | | ... | 20. |
| | G. F. Fuller | | ... | 5. |
| | H. H. Stone | | ... | 50. |
| | C. O. Connor | Oct. | 15... | 5. |
| | A. R. Crown | | ... | 200. |

| | | | |
|---|---|---|---|
| H. M. Brooks | | ... | 20. |
| R. C. Price | | ... | 20. |
| A. B. Crooks | | ... | 100. |
| C. P. Hoffman | | ... | 150. |
| P. Z. Drumm & Sons | | ... | 159.2 |
| T. D. Buxton | | ... | 10. |
| W. H. Hughes | | ... | 99.50 |
| James H. Jolliffe | | ... | 100. |
| W. F. Wilhoite | | ... | 2. |
| H. Winkelman | | ... | 10. |
| S. B. Wray | | ... | 5. |
| S. B. Hale | | ... | 10. |
| 239 I. Thompson | | ... | 2. |
| S. T. McClurg | | ... | 5. |
| E. S. Newton | | ... | 25. |
| S. Youngman | | ... | 6. |
| M. J. Riordan | | ... | 20. |
| K. B. De Lano | | ... | 50. |
| J. G. Montgomery | | ... | 5. |
| G. H. Henry | | ... | 30. |
| John D. Davidson | Oct. 18... | | 5. |
| J. K. Darby | | ... | 25. |
| D. Felter | | ... | 5. |
| John Anderson | | ... | 5. |
| ——— | | ... | 15. |
| E. G. Ford | | ... | 2. |
| C. C. Fowler | | ... | 4. |
| M. T. Doty | Oct. 19... | | 600. |
| John T. Mason | | ... | 10. |
| H. A. Strong | | ... | 25. |
| J. S. Boyd | | ... | 120. |
| D. Neville | | ... | 200. |
| A. A. Lender | | ... | 3985.50 |
| John W. Regan | | ... | 20. |
| Adams K. Mason | | ... | 797. |
| John J. Redmond | | ... | 20. |
| Frank King | | ... | 40. |
| E. M. Smith | | ... | 498.50 |
| 240 F. E. Stanton | | ... | 5. |
| J. McCluskey | | ... | 25. |
| J. S. Wilkins | | ... | 1. |
| S. J. Gano | | ... | 10. |
| Isaac Dox | | ... | 10. |
| Joseph Bosworth | | ... | 8. |
| F. W. Hagadorn | | ... | 5. |
| H. S. Mower | | ... | 100. |
| W. W. Test | | ... | 5. |
| R. Foster | | ... | 398.50 |
| H. S. Anders | | ... | 20. |
| H. C. Battelle | | ... | 199. |
| G. B. Gurney | | ... | 25. |

| | | | |
|---|---|---|---|
| A. L. Butterworth | Oct. | 20... | 20. |
| E. Allen | | ... | 15. |
| J. Wilkinson | | ... | 200. |
| J. H. Jolliffe | | ... | 100. |
| R. D. Meeker | | ... | 5. |
| W. Watkins | | ... | 40. |
| W. Archibald | | ... | 10. |
| J. B. Clute | | ... | 2000. |
| J. R. Wilson | | ... | 20. |
| J. L. Fowler | | ... | 10. |
| J. B. Quinn | | ... | 5. |
| E. M. Hubbard | | ... | 200. |
| 241 R. P. Gifford | | ... | 100. |
| G. S. Barhydt | | ... | 100. |
| W. N. Randall | | ... | 100. |
| R. F. Germond | | ... | 100. |
| V. L. Owen | | ... | 100. |
| F. J. Cogswell | | ... | 150. |
| W. H. Dunbar | | ... | 199.25 |
| Charles R. Bassett | | ... | 400. |
| Thomas G. Carson | | ... | 300. |
| James A. Ferguson | | ... | 400. |
| R. S. Van Sickle | | ... | 2000. |
| Sidney Law | | ... | 20. |
| M. E. Law | | ... | 20. |
| I. Thompson | | ... | 8. |
| F. B. Lewis | | ... | 20. |
| B. C. Averill | | ... | 159.40 |
| W. V. Wentworth | | ... | 100. |
| James Cronon | | ... | 80. |
| Newton Howe | | ... | 80. |
| T E. Thompson | | ... | 5. |
| H. M. Morgan | | ... | 20. |
| F. E. Stanton | | ... | 5. |
| W. H. Brady | | ... | 10. |
| W. F. Reed | | ... | 79.70 |
| G. M. May | | ... | 79.70 |
| | | | 79.70 |
| 242 B. Cochran | | ... | 20. |
| M. Cochran | | ... | 30. |
| Alice Cochran | | ... | 5. |
| James Cochran | | ... | 15. |
| E. Cochran | | ... | 5. |
| Alfred Cochran | | ... | 25. |
| W. A. Corderman | | ... | 79.70 |
| W. A. Greene | | ... | 70. |
| J. Vanderveer | | ... | 40. |
| A. D. Vanderveer | | ... | 32. |
| L. M. Crouch | | ... | 15. |
| J. A. Yard | | ... | 20. |

| | | | |
|---|---|---|---|
| F. E. Whipple | | ... | 30. |
| H. Rosenberg | | ... | 5. |
| J. R. Rosenberg & Bros. | | ... | 25. |
| C. H. Winslow | | ... | 10. |
| L. D. Triol | | ... | 10. |
| A. J. Bingham | | ... | 10. |
| J. B. Gardner | | ... | 10. |
| W. Kimmerling | | ... | 20. |
| O. J. Whilock | | ... | 2. |
| H. J. Smith | | ... | 20. |
| F. S. Schenck | | ... | 30. |
| | R. F. Lyon | ... | 40. |
| 243 | A. F. Parsons | ... | 20. |
| | E. S. Banks | ... | 50. |
| H. C. Pastorious | | ... | 25.63 |
| John Littell | | ... | 80. |
| H. B. Canaway | | ... | 5. |
| E. B. Jones | | ... | 25. |
| B. S. Binney | | ... | 50. |
| F. Richardson | | ... | 20. |
| S. M. Schuler | | ... | 20. |
| J. J. Redmond | | ... | 20. |
| C. Olson | | ... | 2. |
| C. O. Conor | | ... | 5. |
| A. Stewart | | ... | 80. |
| Isaac F. Chase | | ... | 20. |
| C. C. Legg | Oct. 22 | ... | 4. |
| M. P. Heald | | ... | 5. |
| J. W. Anderson | | ... | 5. |
| E. P. Lingle | | ... | 40. |
| W. Y. Meschler | | ... | 200. |
| W. M. Williams | | ... | 2. |
| E. W. Robinson | | ... | 2. |
| L. C. Nordenberg | | ... | 5. |
| S. B. Lathrop | | ... | 100. |
| F. Kleeberg | | ... | 50. |
| | G. H. Fales | ... | 160. |
| 244 | F. C. Steen Bohn | ... | 5. |
| | F. D. Chase | ... | 2. |
| J. C. Thomson | | ... | 20. |
| Katie T. Courtney | | ... | 25. |
| Oscar Van Gottberg | | ... | 5. |
| D. W. Bratton | | ... | 5. |
| K. A. Iveson | | ... | 10. |
| R. W. D. Anderson | | ... | 80. |
| G. D. Sweetzer | | ... | 100. |
| H. Houghton | | ... | 30. |
| J. J. Miller | | ... | 20. |
| S. B. Hale | | ... | 60. |
| J. A. Rich | | ... | 20. |
| Merriam & Morgan | | ... | 35. |

| | | | |
|---|---|---|---|
| W. K. Hilton, Jr. | | ... | 10. |
| N. P. Bauerlein | | ... | 50. |
| Kate S. Keith | | ... | 40. |
| L. M. White | | ... | 160. |
| W. H. Saunders & Son | | ... | 80. |
| L. F. Hiorns | | ... | 797.60 |
| F. A. Kicker | | ... | 10. |
| E. W. Bass | | ... | 1600. |
| R. C. Price | | ... | 80. |
| L. E. Diehl | | ... | 8. |
| M. C. Merriman | | ... | 800. |
| 245 R. C. Reed | | ... | 100. |
| E. M. Bell | | ... | 20. |
| Mrs. M. P. Patrick | | ... | 797. |
| M. I. Doty | | ... | 2200. |
| W. W. Leidy | | ... | 1. |
| F. S. Gregory | | ... | 5. |
| L. B. Smith | | ... | 1. |
| Thomas Senior | | ... | 2. |
| John H. Ayers | | ... | 5. |
| P. W. Weed | | ... | 10. |
| F. Seniza | | ... | 20. |
| C. F. Hoffman | | ... | 600. |
| M. Ressler | | ... | 120. |
| R. Pritchard | | ... | 20. |
| J. W. McGee | Oct. 24... | | 25. |
| E. B. Dunham | | ... | 400. |
| W. T. Atchley | | ... | 20. |
| D. W. Easton | | ... | 100. |
| W. B. Rochester | | ... | 100. |
| O. G. McCall | | ... | 500. |
| W. H. Greeman | | ... | 20. |
| S. S. Ellis | | ... | 80. |
| F. King | | ... | 80. |
| B. F. McMillan | | ... | 5. |
| Mary C. Chisholm | | ... | 300. |
| 246 I. S. Little | | ... | 30. |
| C. Bentham | | ... | 30. |
| C. M. Field | | ... | 4000. |
| Francis Lee | | ... | 4. |
| H. Schopflocher | | ... | 50. |
| W. R. Lang | | ... | 300. |
| L. Cleaver | | ... | 80. |
| Thos. Golding | | ... | 10. |
| O. J. Benham | | ... | 600. |
| E. D. Very | | ... | 10. |
| E. G. Miller | | ... | 200. |
| W. Trenkamp | | ... | 20. |
| A. L. Godert | | ... | 5. |
| M. Carson | | ... | 160. |
| L. A. McMillan | | ... | 20. |

| | | | |
|---|---|---|---|
| | C. L. Soule | ... | 20. |
| | H. J. Mahon | ... | 20. |
| | S. T. McCluney | ... | 5. |
| | H. J. McMahon | ... | 40. |
| | L. E. Tarbell | ... | 2 |
| | H. Enneking | ... | 10. |
| | J. R. Van Alstyn | ... | 80. |
| | Charles Hughes | ... | 20. |
| | J. A. Ferguson | ... | 1600. |
| | W. S. Hughes | ... | 5. |
| 247 | Martha Dickey | ... | 10. |
| | F. Zimmerman | Oct. 25... | 25. |
| | C. Adams | ... | 10. |
| | A. S. Thompson | ... | 2 |
| | T. C. Jones | ... | 159.50 |
| | C. R. Lane | ... | 5. |
| | A. C. James | ... | 5. |
| | H. M. Martin | ... | 20. |
| | Pitts Bros. & Miller | ... | 5. |
| | C. C. Fowler | ... | 4. |
| | W. W. Leidy | ... | 4. |
| | E. Newton | ... | 25. |
| | R. C. Reed | ... | 100. |
| | John Dennison | ... | 2 |
| | Mrs. J. S. Howard | ... | 37. |
| | C. Baer | ... | 40. |
| | E. A. McMahon | ... | 5. |
| | S. McCowan | ... | 20. |
| | M. F. Brett | ... | 20. |
| | T. F. Brett | ... | 20. |
| | C. G. Head | Oct. 26... | 5. |
| | Swartley Bros. | ... | 100. |
| | M. G. Olds | ... | 100. |
| | H. Thane | ... | 20. |
| | F. S. Gregory | ... | 15. |
| 248 | H. M. Brooks | ... | 20. |
| | John A. Kerr | ... | 100. |
| | Henry J. Burwash | ... | 100. |
| | H. Smith | ... | 52. |
| | M. S. Tormenstein | ... | 10. |
| | P. W. Weed | Oct. 27... | 10. |
| | M. E. Werry | ... | 100. |
| | W. A. Childs | ... | 100. |
| | A. E. White | ... | 50. |
| | A. H. Graves | ... | 20. |
| | A. C. James | ... | 5. |
| | W. C. Wood | ... | 40. |
| | K. B. Warner | ... | 250. |
| | C. W. Barrick (cash book) | ... | 5. |
| | A. A. Remke | ... | 2. |
| | C. Rose | ... | 20. |

| | | | | |
|---|---|---|---|---|
| | F. Berking | | ... | 20. |
| | A. S. Heritage | | ... | 20. |
| | Louis Plath | Oct. | 28... | 60. |
| | P. G. Konen | | ... | 60. |
| | L. Atwater | | ... | 5. |
| | Ed. Fredrick | | ... | 60. |
| | Thomas Senior | | ... | 7. |
| | J. C. Thomson | | ... | 20. |
| | G. B. Henry | | ... | 10. |
| 249 | E. G. Miller | | ... | 500. |
| | C. Baer | | ... | 159.20 |
| | F. E. Thomson | Oct. | 29... | 15. |
| | F. Lee | | ... | 6. |
| | J. Hunninger | | ... | 8. |
| | C. H. Drumm | | ... | 50. |
| | M. E. Werry | | ... | 140. |
| | John J. Drennen | | 31... | 100. |
| | M. Burke | | ... | 100. |
| | Joseph Curry | | ... | 100. |
| | M. J. Riordan | | ... | 20. |
| | W. B. Rochester | | ... | 100. |
| | Frank Grace | | ... | 28.50 |
| | Nancy Carter | | ... | 10. |
| | Jas. W. Devoe | | ... | 3. |
| | John L. Fryburg | | ... | 5. |
| | W. F. Willhoite | | ... | 2. |
| | J. E. Peach | Nov. | 1... | 40. |
| | M. S. Felter | | ... | 4. |
| | H. F. Stannard | | ... | 4. |
| | J. B. Gardner | | ... | 30. |
| | E. C. Tallmadge | | ... | 797.60 |
| | A. E. White | | ... | 200. |
| | Subs. acc't | | 2... | 500. |
| | Geo. Witcheley | | ... | 1. |
| | G. S. Soule | | ... | 60. |
| 250 | W. A. Marshall | | ... | 15. |
| | A. Walker | | ... | 1. |
| | G. Barhydt | | ... | 300. |
| | Frank Haaley | | ... | 10. |
| | H. M. Brooks | | ... | 20. |
| | W. Archibald | | ... | 30. |
| | C. E. Adair | | ... | 4. |
| | J. C. Shanahan | | ... | 3. |
| | Thos. Greenham | | ... | 3. |
| | I. S. Little | | ... | 90. |
| | W. B. Rochester | | ... | 100. |
| | S. L. Kinsell | | ... | 5.0 |
| | A. Walker | | ... | 1. |
| | Thos. G. Carson | | ... | 300. |
| | W. P. Herrick | | ... | 20. |
| | C. D. Hubbard | | ... | 80. |

| | | | | |
|---|---|---|---|---|
| | E. P. Huntling | | ... | 100. |
| | L. Plath | | ... | 180. |
| | R. Noble | | ... | 500. |
| | J. H. Atwood | | ... | 675. |
| | C. B. Wiser | | ... | 57. |
| | T. Senior | | ... | 14. |
| | G. Witchey | | ... | 1. |
| | B. H. Riddle | | ... | 3. |
| | L. &. E. Baird | | ... | 20. |
| 251 | F. C. F. Steen Bohn | Nov. 7 | ... | 15. |
| | H. M. Brooks | | ... | 20. |
| | H. N. Enneking | | ... | 30. |
| | Mrs. J. S. Howard | | ... | 2.85 |
| | C. W. Barnick | | 9... | 20. |
| | S. N. Shuler | | ... | 60. |
| | E. P. Huntling | | ... | 400. |
| | L. E. Tarbell | | ... | 6. |
| | C. P. Ross | | ... | 250. |
| | W. K. Hilton | | ... | 30. |
| | L. M. White | | ... | 480. |
| | F. A. Ricker | | ... | 30. |
| | Edward Allen | | ... | 45. |
| | Peter G. Conen | | ... | 180. |
| | E. Fredrick | | ... | 180. |
| | J. A. Ferguson | | ... | 2500. |
| | A. W. White | | ... | 2149.56 |
| | A. Remke | | ... | 2 |
| | L. E. Tarbell | | ... | 5. |
| | A. Walker | | ... | 3. |
| | L. H. Myers | | ... | 80. |
| | F. A. Bentham | | ... | 50. |
| | John Dennison | | ... | 6. |
| | E. D. Werry | | ... | 30. |
| | G. F. Fuller | | ... | 15. |
| 252 | P. J. McMyler | | ... | 80. |
| | L. B. Smith | Nov. 14 | ... | 3. |
| | J. F. Miller | | ... | 20. |
| | B. H. Hailey | | ... | 20. |
| | M. S. Felter | | ... | 6. |
| | H. F. Stannard | | ... | 6. |
| | John D. Davison | | ... | 15. |
| | D. Felton | | ... | 15. |
| | John Anderson | | ... | 15. |
| | A. C. Pretz | | ... | 5. |
| | J. G. Montgomery | | 15... | 15. |
| | J. J. Miller | | ... | 60. |
| | D. W. Bratton | | ... | 15. |
| | W. B. Rochester | | ... | 600. |
| | E. O. Lingle | | ... | 90. |
| | R. G. Farrer | | ... | 10. |
| | E. G. Ford | | 16... | 6. |

| | | | |
|---|---|---|---|
| F. Grace | ... | | 114. |
| P. H. Dedrick | ... | | 150. |
| M. Dedrick | ... | | 150. |
| H. J. Burwash | ... | | 60. |
| S. G. Gano | ... | | 30. |
| R. P. Meaker | ... | | 15. |
| W. V. Wentworth | ... | | 300. |
| B. S. Binney | ... | | 150. |
| G. S. Wilkins | ... | | 4. |
| 253 W. Kimmerling | ... | | 60. |
| D. Neville | ... | | 400. |
| D. Neville | ... | | 200. |
| R. F. Lyon | ... | | 120. |
| A. C. James | ... | | 15. |
| H. C. Pastorious | ... | | 75. |
| C. E. Brown | ... | | 20.03 |
| E. S. Banks | ... | | 150. |
| W. D. Wyckoff | ... | | 30. |
| E. J. Banker | ... | | 400. |
| H. Winkleman | ... | | 40. |
| S. B. Wray | ... | | 20. |
| D. Neville | Nov. 16... | | 50. |
| Katie S. Keith | ... | | 120. |
| J. R. Van Alstyn | 17... | | 120. |
| H. A. Strong | ... | | 75. |
| W. H. Brady | ... | | 30. |
| J. T. Mason | ... | | 30. |
| S. G. Law | ... | | 48. |
| S. G. Law | ... | | 12. |
| M. E. Law | ... | | 60. |
| A. J. Bingham | ... | | 10. |
| C. Adams | ... | | 30. |
| W. N. Randall | ... | | 300. |
| H. S. Anders | ... | | 20. |
| 254 A. S. Thompson | ... | | 6. |
| J. H. Ayers | ... | | 15. |
| W. W. Test | ... | | 15. |
| F. W. Hagadorn | ... | | 15. |
| A. L. Butterworth | ... | | 60. |
| C. G. Henderson | ... | | 15. |
| J. B. Quinn | ... | | 15. |
| Frank Richardson | ... | | 60. |
| J. A. Yard | ... | | 60. |
| M. J. Riordan | ... | | 60. |
| F. S. Schenck | ... | | 90. |
| R. C. Reed | ... | | 300. |
| F. E. Whipple | ... | | 90. |
| O. G. McCall | ... | | 1500. |
| F. H. Leonard | ... | | 80. |
| Joseph C. Leonard | ... | | 80. |
| J. A. Rich | ... | | 60. |

| | | | |
|---|---|---|---|
| | Ward St. John | ... | 50. |
| | J. W. Anderson | ... | 15. |
| | H. M. Warden | ... | 60. |
| | William Watkins | ... | 120. |
| | Isaac Dix | ... | 30. |
| | W. H. Simmonson | ... | 30. |
| | W. Y. Meschter | ... | 600. |
| | O. J. Whitlock | ... | 6. |
| 255 | F. E. Stanton | ... | 15. |
| | G. B. Gurney | ... | 75. |
| | V. L. Owen | ... | 300. |
| | J. L. Fowler | ... | 30. |
| | L. D. Triol | ... | 30. |
| | S. P. Lathrop | ... | 300. |
| | F. Seniza | ... | 60. |
| | Katie T. Courtney | ... | 130. |
| | Katie T. Courtney | ... | 45. |
| | W. A. Green | ... | 210. |
| | James Cochran | ... | 45. |
| | A. Cochran | ... | 15. |
| | E. Cochran | ... | 15. |
| | B. Cochran | ... | 60. |
| | M. Cochran | ... | 90. |
| | A. Cochran | ... | 75. |
| | A. T. Parson | ... | 60. |
| | L. M. Crouch | ... | 45. |
| | C. R. Bassett | ... | 1200. |
| | C. Olson | ... | 6. |
| | F. A. Germond | ... | 15. |
| | A. Robertson | ... | 15. |
| | G. R. Anderson | ... | 15. |
| | Wm. Morgan | ... | 60. |
| | James H. Jolliffe | ... | 300. |
| 256 | H. Hughton (cash book) | ... | 90. |
| | J. M. Ives | ... | 100. |
| | D. W. Easton | ... | 300. |
| | W. P. Herrick | ... | 30. |
| | M. P. Heald | ... | 15. |
| | O. Van Goltberg | ... | 15. |
| | G. D. Sweetzer | ... | 300. |
| | J. R. Wilson | ... | 60. |
| | C. B. Wiser | ... | 200. |
| | L. C. Nordenberg | Nov. 18... | 15. |
| | M. S. Tormenstein | ... | 30. |
| | F. D. Chase | ... | 6. |
| | W. H. Freemen | ... | 60. |
| | F. Kleeberg | ... | 150. |
| | G. W. Watters | ... | 60. |
| | F. B. Lewis | ... | 60. |
| | G. W. Hubbard | ... | 600. |
| | S. L. Kinseel | ... | 15. |

| | | | |
|---|---|---|---|
| | F. Lee | ... | 12. |
| | E. M. Bell | ... | 60. |
| | B. F. McMillan | ... | 15. |
| | C. O Conor | ... | 15. |
| | L. A. McMillan | ... | 60. |
| | H. M. Brooks | ... | 120. |
| | J. W. Regan | ... | 10. |
| 257 | B. F. Garwood | ... | 300. |
| | S. B. Hale | ... | 100. |
| | G. Witchley | ... | 3. |
| | C. C. Fowler | ... | 12. |
| | Pitts Bros. & Miller | ... | 15. |
| | J. J. Redmond | 19... | 60. |
| | John A. Kerr | ... | 300. |
| | T. G. Carson | ... | 900. |
| | E. B. Jones | ... | 75. |
| | K. A. Iveson | ... | 30. |
| | Michael Burke | ... | 300. |
| | J. P. Curry | ... | 300. |
| | P. W. Weed | ... | 30. |
| | O. J. Benham | ... | 200. |
| | L. Atwater | ... | 15. |
| | W. R. Lang | ... | 900. |
| | C. R. Lane | ... | 15. |
| | Thomas Golding | ... | 30. |
| | C. Bentham | ... | 90. |
| | I. F. Chase | ... | 60. |
| | M. Dickey | ... | 30. |
| | Herman Schopflocker | ... | 150. |
| | Henry Thane | ... | 60. |
| | Noble G. Olds | ... | 300. |
| | W. H. Johnson | ... | 500. |
| 258 | G. L. Hewins | ... | 20. |
| | O. J. Benham | 22... | 750. |
| | R. P. Gifford | ... | 300. |
| | E. G. Miller | ... | 1500. |
| | W. W. Kulp | ... | 40. |
| | J. J. Drennan | ... | 300. |
| | W. Trenkamp | ... | 60. |
| | J. C. Thompson | ... | 60. |
| | W. L. Hughes | ... | 15. |
| | J. N. Darby | ... | 60. |
| | W. H. Johnson | ... | 500. |
| | A. B. Crooks | ... | 20. |
| | A. S. Heritage | ... | 80. |
| | B. H. Riddle | ... | 9. |
| | August A. Remke | ... | 6. |
| | M. W. Wright | ... | 161. |
| | W. E. Werry | 26... | 100. |
| | Wm. Chalmers | ... | 50. |
| | H. M. Martin | ... | 5. |

| | | | | |
|---|---|---|---|---|
| | W. W. Kulp | | ... | 40. |
| | W. E. Williams | | ... | 8. |
| | E. W. Robinson | | ... | 6. |
| | C. H. Winslow | | ... | 35. |
| | H. B. Canaway | | ... | 15. |
| | J. M. Ives | | ... | 1000. |
| 259 | W. W. Leidy | | ... | 4. |
| | R. G. Farrar | | ... | 40. |
| | Mrs. N. F. Van Sickle | | ... | 60. |
| | J. M. Ives | | ... | 100. |
| | J. S. Boyd | | ... | 300. |
| | J. Scott Boyd | | ... | 60. |
| | Albert Metzger | | ... | 20. |
| | C. H. Winslow | | ... | 5. |
| | W. Archibald | | ... | 10. |
| | F. Warner | | 29... | 15. |
| | H. Parker | | ... | 20. |
| | G. E. Fisher | | ... | 40. |
| | S. P. Lathrop | | ... | 75. |
| | A. T. Parsons | | ... | 30. |
| | E. P. Harley | | ... | 80. |
| | Jno. P. Quinn | | ... | 3. |
| | H. J. McMahon | | ... | 20. |
| | Swarthy Bros. | | ... | 300. |
| | S. F. McClurg | | ... | 30. |
| | J. H. Marshall | | ... | 50. |
| | Pitts Bros. & Miller | | ... | 23.50 |
| | F. A Parmalee | | ... | 10. |
| | E. M. Smith | | ... | 250. |
| | A. H. Graves | | ... | 80. |
| | F. Lee | | ... | 12 |
| | E. S. Newton | | ... | 75. |
| 260 | F. J. Cogswell | | ... | 450. |
| | A. B. Crook | | ... | 20. |
| | E. G. Ford | | ... | 2 |
| | J. K. Burrage | | ... | 100. |
| | J. R. Rosenberger | | ... | 90. |
| | W. M. Williams | | ... | 6. |
| | F. C. Steen Bohn | | ... | 5. |
| | Nancy Carter | | ... | 10. |
| | N. P. Bauerlein | | ... | 150. |
| | F. M. Miller | Dec. | 1... | 5. |
| | E. B. Tabor | | ... | 5. |
| | J. H. Marshall | | ... | 50. |
| | J. J. Miller | | ... | 10. |
| | Thos. Senior | | 2... | 5. |
| | E. J. McClusky | | ... | 5. |
| | Jennie E. Peach | | ... | 40. |
| | W. W. Leidy | | ... | 4. |
| | A. T. Parsons | | ... | 30. |
| | S. P. Lathrop | | ... | 300. |

| | | | | |
|---|---|---|---|---|
| | J. W. McGee | | ... | 75. |
| | F. Kleeberg | | ... | 50. |
| | J. F. Fryberg | | ... | 15. |
| | Julia A. Bond | Dec. | 3... | 1994. |
| | S. F. McClury | | ... | 60. |
| | W. F. Willhoite | | ... | 6. |
| 261 | W. L. Keith | | ... | 50. |
| | W. C. Wood | | ... | 160. |
| | G. L. Hewins | | ... | 40. |
| | E. A. McMahon | | ... | 15. |
| | E. C. Tallmage | | ... | 199.40 |
| | S. G. Law | | ... | 40. |
| | G. H. Fales | | ... | 200. |
| | E. H. Drumm | | ... | 20. |
| | F. C. Stein Bohn | | ... | 5. |
| | L. M. Crouch | | 5... | 10. |
| | J. W. Devoe | | ... | 9. |
| | A. Metzger | | ... | 20. |
| | C. H. Drumm | | ... | 150. |
| | S. McCowan | | ... | 25. |
| | C. L. Potter | | ... | 50. |
| | L. H. Meyer | | ... | 80. |
| | John T. Mason | | ... | 10. |
| | Chas. F. Ross | | ... | 250. |
| | L. H. Meyer | | ... | 320. |
| | Maria Patrick | | ... | 212. |
| | Jno. H. Vunneays | | ... | 9.40 |
| | F. Kleeberg | | ... | 199.25 |
| | Pitts Bros. & Miller | | ... | 1.50 |
| | Henry C. Pastorious | | ... | 25. |
| | Jno. B. Quinn | | ... | 3. |
| | J. T. Mason | | ... | 10. |
| 262 | A. H. Graves | | ... | 20. |
| | Jas. A. Freeman | Dec. | 7... | 20. |
| | T. V. Buxton | | ... | 18. |
| | B. F. Fletcher | | ... | 5. |
| | E. B. Tabor | | ... | 20. |
| | E. M. Milne | | ... | 20. |
| | J. Dennison | | ... | 3. |
| | A. B. Crook | | ... | 20. |
| | C. R. Lane | | ... | 23.50 |
| | H. A. Strong | | ... | 35. |
| | S. McCowan | | ... | 5. |
| | E. H. Drumm | | ... | 79.60 |
| | I. S. Little | | ... | 400. |
| | Jennie E. Peach | | ... | 80. |
| | J. Henninger | Dec. | 8... | 10. |
| | H. C. Pastorious | | ... | 25. |
| | Ella B. Dunham | | ... | 500. |
| | R. J. Farrar | | ... | 10. |
| | D. Neville | | ... | 50. |

| | | | |
|---|---|---|---|
| | W. P. Herrick | ... | 20. |
| | A. S. Curtiss | 9... | 10. |
| | A. T. Benham | ... | 100. |
| | J. L. Fowler | ... | 10. |
| | H. F. Stannard | ... | 15. |
| | Darwin Felter | ... | 25. |
| 263 | M. S. Felton | ... | 15. |
| | H. H. Saunders | ... | 100. |
| | W. A. Marshall | ... | 10. |
| | H. M. Martin | ... | 10. |
| | Newton Howe | ... | 20. |
| | James Cronon | ... | 20. |
| | George L. Hewins | ... | 20. |
| | George L. Hewins | ... | 40. |
| | Fanny Huxford | ... | 50. |
| | D. Neville | ... | 50. |
| | James A. Freeman | ... | 79.70 |
| | W. H. Dunbar | ... | 20. |
| | Catherine A. Ferguson | ... | 2000. |
| | G. W. Gross | Dec. 12... | 4.70 |
| | E. Gross | ... | 4.70 |
| | A. B. Crook | ... | 80. |
| | L. M. Crouch | ... | 10. |
| | Isaac Herring | ... | 50. |
| | E. P. Haaley | ... | 40. |
| | W. Archibald | ... | 40. |
| | T. V. Buxton | ... | 18. |
| | F. R. Baker | ... | 25. |
| | C. R. Lane | ... | 1.42 |
| | E. E. Baird | ... | 5. |
| | Sub. acc't | ... | 25. |
| 264 | G. L. Lawrence | ... | 22.50 |
| | Katie T. Courtney | ... | 12. |
| | F. W. Hagadorn | ... | 5. |
| | Jno. Dennison | ... | 12. |
| | Henry D. Baker | ... | 525. |
| | Michael Leen | ... | 2.10 |
| | H. L. Mugford | ... | 1492.50 |
| | W. A. Green | ... | 130. |
| | Thos. Senior | ... | 1. |
| | W. D. Wyckoff | 13... | 10. |
| | J. L. Fowler | ... | 10. |
| | M. Patrick | ... | 212. |
| | Frank Healey | ... | 30. |
| | I. C. Herring | ... | 200. |
| | F. O. Bentham | ... | 50. |
| | W. Trenkamp | 14... | 373.88 |
| | Wilmena Kinkaid | ... | 30. |
| | W. F. Willhoite | ... | 2. |
| | J. H. Vannuys | ... | .60 |
| | W. H. Dunbar | ... | 80. |

| | | | | | |
|---|---|---|---|---|---|
| | G. E. Fisher | | | ... | 160. |
| | B. F. Fletcher | | | ... | 5. |
| | H. M. Martin | | | ... | 20. |
| | R. J. Farrar | | | ... | 10. |
| | E. S. Lawrence | | | ... | 202.75 |
| 265 | Hugo A. Strong | | | ... | 140. |
| | Ada F. Benham | | | 16... | 100. |
| | C. D. Hubbard | | | ... | 30. |
| | G. W. Watters | | | ... | 20. |
| | S. McCowan | | | ... | 20. |
| | J. H. Britton | | | ... | 5. |
| | W. Trenkamp | | | ... | 125. |
| | C. D. Hubbard | | | ... | 10. |
| | W. A. Greene | | | ... | 130. |
| | J. J. Miller | | | 19... | 40. |
| | F. W. Hagadorn | | | ... | 20. |
| | Newton Howe | | | ... | 80. |
| | Jas. Cronon | | | ... | 80. |
| | E. J. McClusky | | | ... | 10. |
| | O. J. Benham | | | ... | 375. |
| | G. S. Post | | | ... | 80. |
| | Katie T. Courtney | | | 21... | 12. |
| | W. H. H. Johnson | | | ... | 1500. |
| | T. Senior | | | ... | 2. |
| | A. S. Curtis | | | ... | 40. |
| | E. E. Baird | | | ... | 5. |
| | Mary E. Werry | | | ... | 60. |
| | W. W. Kulp | | | ... | 120. |
| | J. H. Marshall | | | 23... | 150. |
| | Jennie E. Peach | | | ... | 80. |
| 266 | Mary A. Hubbard | | | ... | 30. |
| | C. D. Hubbard | | | ... | 10. |
| | F. A. Parmelle | | | 27... | 40. |
| | T. Senior | | | 24... | 2. |
| | A. F. Bentham | | | 28... | 150. |
| | A. T. Parsons | | | ... | 90. |
| | A. F. Bentham | | | ... | 300. |
| | F. C. F. Steen Bohn | | | ... | 15. |
| | W. W. Willhoite | | | ... | 8. |
| | A. Metzger | | | ... | 60. |
| | Jno. B. Quinn | | | ... | 9. |
| | J. J. Miller | | | 30... | 250. |
| | D. Neville | | | ... | 100. |
| | Mary A. Hubbard | | | ... | 120. |
| | W. P. Herrick | Jan. | 3 1893 | ... | 30. |
| | L. M. Crouch | | | ... | 30. |
| | K. B. Courtney | | | ... | 36. |
| | M. V. Lomax | | | ... | 6.25 |
| | W. W. Leidy | | | ... | 12. |
| | G. L. Hewins | | | ... | 180. |
| | B. F. Fletcher | | | ... | 15. |

| | | | | |
|---|---|---|---|---|
| | H. C. Pastorious | | ... | 75. |
| | M. Leen | | ... | 9.25 |
| | Mrs. Maria Patrick | 5 | ... | 636. |
| | C. B. Wiser | | ... | 752. |
| 267 | W. A. Green | 9 | ... | 390. |
| | S. G. Law | | ... | 60. |
| | Jno. T. Mason | | ... | 30. |
| | Catherine A. Ferguson | 10 | ... | 500. |
| | E. P. Healey | | ... | 60. |
| | Frank Stovis | 11 | ... | 625. |
| | V. E. Baird | 13 | ... | 15. |
| | A. B. Crook | | ... | 60. |
| | J. K. Burrage | | ... | 93.75 |
| | Eliza G. Newhall | | ... | 156.25 |
| | O. J. Benham | | ... | 200. |
| | Francis Lee | | ... | 12. |
| | Jno. B. Clute | | ... | 625. |
| | Ross Knight | | ... | 31.25 |
| | R. J. Farrar | | ... | 30. |
| | H. M. Martin | | ... | 30. |
| | C. B. Wiser | | ... | 2124.64 |
| | Do. | | ... | 288.68 |
| | C. B. Wiser | | ... | 817.15 |
| | A. L. Marks | | ... | 62.50 |
| | Michael Leen | | ... | 6.25 |
| | Ross Knight | Jan. 21 | ... | 343.75 |
| | C. B. Wiser | 24 | ... | 320.55 |
| | D. Neville | | ... | 250. |
| | Wilmena Kinkaid | 26 | ... | 15. |
| 268 | Mary K. Bacon | 28 | ... | 1245.75 |
| | Chas. L. Sowle | Feb. 8 | ... | 16. |
| | Rose Noble | 9 | ... | 500. |
| | Charles L. Sowle | | ... | 84. |
| | Mrs. R. Farrar | 14 | ... | 62.50 |
| | Sylvanus Birch | 16 | ... | 100. |
| | Do. | 25 | ... | 525. |
| | Mary E. Werry | | ... | 87.50 |
| | R. B. Crouch | Mar. 4 | ... | 18.75 |
| | Edgar M. Page | 6 | ... | 36.56 |
| | C. B. Wiser | 11 | ... | 1350. |
| | Lydia M. White | | ... | 675. |
| | George C. Page | | ... | 274.22 |
| | Mary F. Whittaker | | ... | 18.75 |
| | O. J. Benham | | ... | 175. |
| | C. B. Wiser | 27 | ... | 135. |
| | Francis Lee | 28 | ... | 50. |
| | Lorenza Harris | | ... | 30. |
| | Edward Fredericks | Apr. 17 | ... | 1025. |
| | Howard M. Martin | 12 | ... | 15. |
| | Mrs. E. B. McClusky | | ... | 22.50 |
| | W. R. Kennard | 22 | ... | 15. |

| | | | |
|---|---|---|---|
| J. Henninger | 15 | ... | 15. |
| W. R. Kennard | | ... | 2. |
| Kate T. Courtney | | ... | 82.50 |
| J. M. McCutcheon | May 8 | ... | 5.50 |
| | | | $129,275.72 |

269 Regular stock.

| | | | |
|---|---|---|---|
| Conrad Bauer | Apr. 21 | ... | 100. |
| Sylvanus Birch | | ... | 500. |
| Rachel J. Farrar | | ... | 50. |
| George C. Page | | ... | 66.25 |
| Samuel T. Lathrop | | ... | 200. |
| Mary E. Werry | | ... | 30. |
| George C. Page | Apr. 25 | ... | 80.75 |
| Samuel T. Lathrop | | ... | 300. |
| C. D. Hubbard | | ... | 100. |
| Frank R. Baker | | ... | 552. |
| Charles R. Lane | | ... | 31.61 |
| Thomas Senior | | ... | 5. |
| Charles R. Lane | | ... | 3.19 |
| Frank Fletcher | May 6 | ... | 15. |
| Mary E. Werry | May 8 | ... | 50. |
| Lydia A. White | June 2 | ... | 500. |
| | | | $2,583.80 |

| | |
|---|---|
| Amount received from the American subscribers to the guaranteed stock | $129,275.72 |
| Amount received from the American subscribers to the regular stock | 2,583.80 |
| Amount received from English subscriptions | 123,852.33 |
| Total receipts | $255,711.85 |
| Amount credited in error and cash refunded on account of Seven Stars subscriptions | 819.08 |
| Total receipts paid and retained | $254,892.77 |

270 *Statement of the Persons to Whom Stock in the Seven Stars Gold Mining Company Was Issued by said Company, Together with the Dates of the Issue of the Certificates Thereof.*

| Date. | Name of stockholder. | No. of shares. |
|---|---|---|
| Nov. 29, 1892. | John M. Ives | 200 |
| | Edward M. Smith | 100 |
| | Mrs. Maria Patrick | 200 |
| | A. P. M. Roome | 200 |
| | Mrs. M. F. Van Sickle | 20 |
| | Samuel D. Lee | 400 |

| | | |
|---|---|---|
| | Louis E. Diehle | 2 |
| | Benjamin Goodman | 100 |
| | Francis Richardson | 20 |
| | Michael Burke | 100 |
| | John J. Drennen | 100 |
| | Joseph J. Miller | 20 |
| | W. A. Greene | 70 |
| | E. S. Banks | 50 |
| | Mary M. Heath | 100 |
| | Henry C. Battelle | 50 |
| | James Cronon | 20 |
| | Newton Howe | 20 |
| | D. W. Easton | 100 |
| | Geo. W. May, Jr. | 20 |
| | Geo. W. May | 20 |
| 271 | | |
| Nov. 29, 1892. | Robert Foster & Son | 100 |
| | D. W. Bratton | 5 |
| | E. M. Nicholl | 20 |
| | George B. Gurney | 25 |
| | Darwin Felter | 5 |
| | John D. Davidson | 5 |
| | John Anderson | 5 |
| | Edgar W. Robinson | 12 |
| | James Cochran | 15 |
| | Alice Cochran | 5 |
| | Edwin Cochran | 5 |
| | Bertha Cochran | 20 |
| | Margaret Cochran | 30 |
| | Alfred Cochran | 25 |
| | James Wilkinson | 50 |
| | D. Neville | 100 |
| | Hugo Athenaios Strong | 25 |
| | Ada L. Butterworth | 20 |
| | Cornelius C. Legg | 1 |
| | L. F. Hiorns | 200 |
| | F. E. Whipple | 30 |
| | R. P. Meaker | 5 |
| | J. A. Polhamius | 200 |
| | Wilfred Archibald | 10 |
| | John W. Regan | 10 |
| 272 | Ellen Josephine Banker | 100 |
| | F. S. Schenck | 30 |
| | Johanna C. Shannahan | 1 |
| | Thomas Greenham | 1 |
| | William A. Marshall | 2 |
| | Harper M. Smith | 50 |
| | George D. Sweetzer | 100 |
| | Thomas W. Murray | 10 |
| | Buidella C. Avarill | 40 |

| | | | | |
|---|---|---|---|---|
| | M. C. Merriman | | | 200 |
| | Daniel Sherman | | | 50 |
| | Josephine A. Yard | | | 20 |
| | Charles Lloyd Sowle | | | 20 |
| | Wm. S. Hughes | | | 5 |
| | Howard M. Martin | | | 5 |
| | F. A. Ricker | | | 10 |
| | T. C. Jones | | | 40 |
| | John L. Fowler | | | 10 |
| | George H. Fales | | | 40 |
| | Francis H. Leonard | | | 20 |
| | Joseph C. Leonard | | | 20 |
| | Wesley W. Test | | | 5 |
| | Swartley Bros | | | 100 |
| | Edwin H. Drum | | | 40 |
| | Frank Miller | | | 20 |
| 273 | Minnie Resslar | | | 40 |
| | Johanna Resslar | | | 20 |
| | Rose M. Verdon | | | 200 |
| | H. H. Saunders & Son | | | 20 |
| | Edward M. Smith | | | 50 |
| M. Ida Doty | | Nov. | 30, 1892 | 600 |
| Matilda Carson | | | | 40 |
| Gustave C. W. Shiff | | | | 20 |
| John S. Boyd | | | | 100 |
| J. Scott Boyd, Jr. | | | | 20 |
| George Mixon, Jr. | | | | 5 |
| William H. Dunbar | | | | 50 |
| Sidney G. Law | | | | 20 |
| Mary E. Law | | | | 20 |
| John R. Wilson | | | | 20 |
| Campbell G. Henderson | | | | 5 |
| C. Olson | | | | 2 |
| O. O. Cooper | | | | 4 |
| Lee D. Triol | | | | 10 |
| S. M. Shuler | | | | 20 |
| Howard S. Anders | | | | 10 |
| Lewis H. Meyer | | | | 20 |
| Francis Seniza | | | | 20 |
| Melissa S. Dedrick | | | | 50 |
| Philip H. Dedrick | | | | 50 |
| | Wm. B. Rochester | | | 200 |
| 274 | Ardemus Stewart | | | 20 |
| | Frank Warner | | | 5 |
| Kate S. Keith | | | | 40 |
| H. Houghton | | | | 30 |
| Lester M. Crouch | | | | 15 |
| A. T. Parsons | | | | 20 |
| William Watkins | | | | 40 |
| Joseph S. Bosworth | | | | 2 |
| John B. Clute | | | | 500 |

| | | |
|---|---|---|
| | John Littell | 20 |
| | Robert P. Giffard | 100 |
| | O. J. Benham | 100 |
| | Do. | 100 |
| | Do. | 100 |
| | Do. | 100 |
| | Do. | 100 |
| | D. Neville | 100 |
| | A. D. Van Dervear | 5 |
| | James D. Van Dervear | 10 |
| | Benjamin S. Bruney | 50 |
| | Bernard S. Sowle | 2 |
| | George F. Fuller | 5 |
| | James A. Rich | 20 |
| | Soloman Youngman | 3 |
| | Charles E. Adair | 1 |
| 275 | F. S. Gregory | 5 |
| | Charles R. Bassett | 200 |
| | Do. | 200 |
| | Henry J. McMahon | 20 |
| | H. J. Smith | 5 |
| | J. L. Fryburg | 2 |
| | Joseph W. Anderson | 5 |
| | Wm. Rummerling | 20 |
| | Lue B. Smith | 1 |
| | James E. Simpson | 1 |
| | William F. Reed | 20 |
| | Ward St. John, Jr | 30 |
| | Francis Edgar Thompson | 5 |
| | Robert J. Wait | 100 |
| | Felix Kleeburg | 50 |
| | V. L. Owen | 100 |
| | Odle J. Whitlock | 2 |
| | W. V. Wentworth | 100 |
| | Charles H. Winslow | 10 |
| | R. F. Lyon | 40 |
| | Jennie E. Peach | 10 |
| | Sarah S. Ellis | 20 |
| | H. Smith | 13 |
| | Edward D. Very | 10 |
| | George W. Hubbard | 200 |
| 276 | A. L. Godert | 12 |
| | Isaac Freeman Chase | 20 |
| | Samuel P. Lathrop | 100 |
| | M. N. Randall | 100 |
| | C. D. Hubbard | 10 |
| | Giles S. Barhydt | 100 |
| | A. S. Van Wickle | 100 |
| | Do. | 100 |
| | Do. | 100 |
| | Do. | 100 |
| | Do. | 100 |

| | | | | |
|---|---|---|---|---|
| | E. W. Bass | | ... | 400 |
| | William H. Brady | | ... | 10 |
| | John T. Mason | | ... | 10 |
| | Louis C. Nordenburg | | ... | 5 |
| | Charles E. Brown | | ... | 5 |
| | Frederick W. Hagadorn | | ... | 5 |
| | Lydia M. White | | ... | 160 |
| | Christian Adams | | ... | 10 |
| | John B. Quinn | | ... | 5 |
| | Willard A. Corderma | | ... | 20 |
| | Katherine A. Iveson | | ... | 10 |
| | William Schaefer | | ... | 12 |
| | Levy E. Tarbell | | ... | 3 |
| | James G. Montgomery | | ... | 5 |
| 277 | Mrs. Fred D. Chase | | ... | 2 |
| | Sara B. Hale | | ... | 40 |
| | William Keene | | ... | 10 |
| | Robert M. D. Anders | | ... | 20 |
| | Robert T. Gorwood | Dec. 1, 1892 | ... | 100 |
| | Henry C. Pastorious | | ... | 25 |
| | Edward Allen | | ... | 15 |
| | Albert L. Thompson | | ... | 2 |
| | Mary P. Heald | | ... | 5 |
| | Ella B. Dunham | | ... | 100 |
| | E. B. Jones | | ... | 25 |
| | Edward Orth Lingle | | ... | 30 |
| | Mrs. William Landon | | ... | 60 |
| | Edgar G. Miller | | ... | 500 |
| | Kate B. De Lane | | ... | 20 |
| | Giles R. Anderson | | ... | 5 |
| | F. A. Germond | | ... | 5 |
| | William Morgan | | ... | 20 |
| | Allison Robertson | | ... | 5 |
| | H. Matilda Morgan | | ... | 20 |
| | Mrs. J. S. Howard | | ... | 10 |
| | Woodruff H. Simonson | | ... | 10 |
| | Mary C. Chisholm | | ... | 120 |
| | John A. Cockerill | | ... | 192 |
| | John H. Ayres | | ... | 5 |
| 278 | Howard B. Canaway | | ... | 5 |
| | Charles D. Hubbard | | ... | 10 |
| | Lena A. McMillan | | ... | 20 |
| | Lucius Atwater | | ... | 5 |
| | Katherine H. Dodge | | ... | 20 |
| | Edwin L. Kistler | | ... | 5 |
| | Thomas Senior | | ... | 2 |
| | Mrs. Benj. H. Riddle | | ... | 3 |
| | Jonathan Henninger | | ... | 2 |
| | Noble G. Olds | | ... | 100 |
| | Pitts Bros. & Miller | | ... | 5 |
| | George Bentley Henry | | ... | 10 |

| | | | |
|---|---|---|---|
| | W. E. Williams | ... | 2 |
| | Amy Battin | ... | 20 |
| | William H. Hughes | ... | 5 |
| | Nicholas P. Bauerlein | ... | 50 |
| | James P. Curry | ... | 100 |
| | Mrs. Cyrus L. Potter | ... | 40 |
| | Martin S. Termenstein | ... | 10 |
| | Ellen E. Baird | ... | 5 |
| | Thomas Golding | ... | 10 |
| | Henry Thane | ... | 20 |
| | Sophia McCowan | ... | 5 |
| | John Dennison | ... | 2 |
| | Christopher Bentham | ... | 30 |
| | W. R. Lang | ... | 300 |
| 279 | Mary F. Brett | ... | 5 |
| | Thomas F. Brett | ... | 5 |
| | Fred Berking | ... | 5 |
| | Caroline Rose | ... | 5 |
| | Henry Enneking | ... | 10 |
| | Benjamin H. Hailey | ... | 5 |
| | J. F. Miller | ... | 5 |
| | Chloe M. Field | ... | 1000 |
| | William J. Meschter | ... | 200 |
| | Mrs. I. S. Little | ... | 5 |
| | George C. Anderson | ... | 5 |
| | I. S. Little | ... | 20 |
| | Orson Gordon McCall | ... | 100 |
| | Do. | ... | 100 |
| | Do. | ... | 100 |
| | Do. | ... | 100 |
| | Do. | ... | 100 |
| | Peter G. Konen | ... | 60 |
| | John Alexander Kerr | ... | 100 |
| | Thomas A. Brock | ... | 20 |
| | Louis Plath | ... | 60 |
| | William H. Freeman | ... | 20 |
| | Herman Schopflocher | ... | 50 |
| | Henry J. Burwash | ... | 20 |
| | Edwin P. Hurley | ... | 20 |
| | Franklin B. Levis | ... | 20 |
| 280 | John B. Gardner | ... | 10 |
| | Oscar Von Gottberg | ... | 5 |
| | Martha Dickey | ... | 10 |
| | F. C. F. Steen Bohn | ... | 5 |
| | William Henry Morgan | ... | 2 |
| | Anna J. Bingham | ... | 6 |
| | Carl Weber | ... | 1 |
| | Edward Fredricks | ... | 60 |
| | Mrs. Cyrus L. Potter | ... | 40 |
| | E. M. Bell | ... | 20 |
| | Charles R. Lane | ... | 5 |

| | | | | |
|---|---|---|---|---|
| | Catherine S. Connell | | ... | 10 |
| | James Henry Jolliffee | | ... | 100 |
| | Henry Winkleman | | ... | 10 |
| | F. V. Buxton | | .. | 2 |
| | A. B. Crooks | | ... | 20 |
| | Robert C. Price | | ... | 20 |
| | Herbert M. Brooks | | ... | 40 |
| | Christopher O. Cono | | ... | 5 |
| | Amanda Crawn | | ... | 40 |
| | Charles Fredrick Hoffman | | ... | 150 |
| | Samuel B. Wray | | ... | 5 |
| | Sara Trevor McClurg | | ... | 5 |
| | Mrs. E. S. Newton | | ... | 25 |
| | Isabella Thompson | | ... | 2 |
| 281 | M. J. Riordan | | ... | 5 |
| | Do. | | ... | 5 |
| | Do. | | ... | 5 |
| | Do. | | ... | 5 |
| | Joseph N. Darby | | ... | 20 |
| | E. G. Ford | | ... | 2 |
| | Clarence C. Fowler | | ... | 4 |
| | Mrs. E. J. McCluskey | | ... | 5 |
| | John James Redmond | | ... | 20 |
| | J. S. Wilkins | | ... | 1 |
| | S. G. Gano | | ... | 10 |
| | Isaac Dox | | ... | 10 |
| | Frederick E. Stanton | | ... | 5 |
| | Frank King | | ... | 20 |
| | P. J. McMyler, trustee | | ... | 20 |
| | Thomas G. Carson | | ... | 100 |
| | Joseph D. Carson | | ... | 100 |
| | Susan D. Carson | | ... | 100 |
| | James A. Ferguson | | ... | 200 |
| | James A. Ferguson | | ... | 500 |
| | Catherine E. Ferguson | | ... | 200 |
| | Katie F. Courtney | | ... | 40 |
| | John C. Thompson | | ... | 20 |
| | W. W. Leidy | | ... | 1 |
| | P. W. Weed | | ... | 10 |
| 282 | Roland C. Reed | | ... | 100 |
| | Charles Hughes | Dec. 3, 1892 | ... | 4 |
| | Alexander C. James | | ... | 5 |
| | Frederick Zimmerman | | ... | 5 |
| | Conrad Baer | | ... | 40 |
| | Mary Elizabeth Werry | | ... | 60 |
| | Annie Elsie White | | ... | 50 |
| | Kate B. Warner | | ... | 50 |
| | Charles Wesley Barrick | | ... | 5 |
| | August A. Remke | | ... | 2 |
| | Albert S. Heritage | | ... | 20 |
| | Thomas Senior | | ... | 3 |

| | | | | |
|---|---|---|---|---|
| | Nancy Carter | | | 4 |
| | Frank Grace | | | 30 |
| | Edward C. Tallmadge | | | 160 |
| | Margaret S. Felter | | | 2 |
| | Harriet F. Stannard | | | 2 |
| | Alexander Walker | | | 1 |
| | William A. Marshall | | | 3 |
| | George Witchey | | | 1 |
| | W. P. Herrick | | | 10 |
| | Edward P. Huntling | | | 100 |
| | Rose Noble | | | 100 |
| | Annie W. White | | | 400 |
| | Rachel J. Farrar | | | 10 |
| 283 | A. H. Graves | | | 20 |
| | Francis J. Cogswell | | | 150 |
| | W. Mosby Williams | | | 2 |
| | J. R. Rosenberger & Bro | | | 25 |
| | Harriet Rosenberger | | | 25 |
| | Josiah K. Burrage | | | 25 |
| | William Chalmers | | | 10 |
| | Martha W. Wright | | | 32 |
| | Julia A. Bond | | | 200 |
| | Do. | | | 100 |
| | Do. | | | 100 |
| | John Wheeler Magee | | | 25 |
| | Thomas Senior | | | 1 |
| | John L. Fryburg | | | 3 |
| | Sara Trevor McClurg | | | 15 |
| | Lewis Cleaver | | | 20 |
| | John R. Van Alstyn | Dec. | 1, 1892 | 40 |
| | J. W. Devoe | Dec. | 5, 1892 | 3 |
| | E. A. McMahon | | | 5 |
| | Willis F. Willhoite | | | 2 |
| | George A. Tales | | | 40 |
| | Edward C. Tallmadge | | | 40 |
| | Kate S. Keith | | | 10 |
| | Samuel P. Lathrop | | | 75 |
| | Warren C. Wood | | | 40 |
| 284 | Clifford H. Drumm | Dec. | 6, 1892 | 50 |
| | Mrs. Cyrus L. Potter | | | 10 |
| | Sophia McCowan | | | 5 |
| | Willabald Trenkamp | | | 20 |
| | David A. Ross | | | 100 |
| | Will Alonza Childs | Dec. | 7, 1892 | 40 |
| | Charles F. Ross | | | 100 |
| | Felix Kleeburg | | | 50 |
| | Lewis H. Meyer | | | 80 |
| | John H. Vunnuys | Dec. | 8, 1892 | 2 |
| | Pitts Bros. & Miller | | | 5 |
| | Frank M. Milne | | | 5 |
| | Essie Bell Tabor | | | 5 |

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|---|---|---|---|---|
| | Charles R. Lane | | ... | 5 |
| | Edward H. Drumm | Dec. | 9, 1892... | 20 |
| | Ella B. Dunham | | ... | 100 |
| | Jonathan Henninger | | ... | 2 |
| | I. S. Little | | ... | 80 |
| | Frank R. Baker | | ... | 12350 |
| | Chas. Q. Freeman | | ... | 1350 |
| | Clinton B. Wiser | Dec. | 12, 1892... | 700 |
| | Frank Healy | | ... | 10 |
| | William A. Marshall | | ... | 2 |
| | Fanny Huxford | | ... | 10 |
| | H. H. Saunders & Son | | ... | 20 |
| 285 | Harriet F. Stannard | | ... | 3 |
| | Darwin Felter | | ... | 5 |
| | Margaret Felter | | ... | 3 |
| | A. B. Crooks | | ... | 20 |
| | James A. Freeman | | ... | 20 |
| | Wilfred Archibald | | ... | 10 |
| | Jessie Bell Tabor | | ... | 5 |
| | Paule Rudolph | | ... | 5 |
| | Henry L. Mugford | | ... | 300 |
| | William D. Wyckoff | | ... | 10 |
| | Sidney L. Kinsell | | ... | 5 |
| | C. M. Offray | Dec. | 15, 1892... | 50 |
| | Willibald Trenkamp | | ... | 25 |
| | Wilmina Kinkaid | | ... | 6 |
| | John Dennison | | ... | 3 |
| | G. W. Gross | | ... | 1 |
| | Edmond Gross | | ... | 1 |
| | Isaac C. Harring | | ... | 50 |
| | F. B. Squires | | ... | 40 |
| | George W. Watters | Dec. | 19, 1892... | 20 |
| | James H. Britton | | ... | 5 |
| | George E. Fisher | | ... | 40 |
| | Hugo A. Strong | | ... | 35 |
| | Charles Willenborg | | ... | 25 |
| | Joseph J. Miller | | ... | 10 |
| 286 | William H. Dunbar | | ... | 20 |
| | Mrs. Sophia McCowan | | ... | 5 |
| | David James Bannon | Dec. | 20, 1892... | 2 |
| | Newton Howe | " | 19, 1892... | 20 |
| | James Cronin | " | 19, 1892... | 20 |
| | Venie B. Walsh | " | 20, 1892... | 5 |
| | Edward Fredricks | " | 20, 1892... | 200 |
| | Wolcott Johnson | | ... | 500 |
| | Anson S. Curtis | Dec. | 22, 1892... | 10 |
| | F. M. Peterson | " | " ... | 1 |
| | Mary Elizabeth Werry | " | 23, 1892... | 20 |
| | Jenny E. Peach | | ... | 40 |
| | Joseph H. Marshall | | ... | 50 |
| | William W. Kulp | | ... | 40 |

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|---|---|---|---|---|
| | George A. Plunkett | Dec. | 27, 1892... | 1 |
| | Frank A. Parmelee | | ... | 10 |
| | Thomas Senior | | ... | 1 |
| | Fannie O. Bentham | Dec. | 29, 1892... | 50 |
| | John B. Quinn | | ... | 3 |
| | Arthur T. Parsons | | ... | 20 |
| | Arthur T. Parsons | | ... | 10 |
| | F. C. F. Steen Bohn | | ... | 5 |
| | Ada F. Bentham | | ... | 100 |
| | Willis F. Willhoite | | ... | 2 |
| | August Lueder | | ... | 1000 |
| 287 | Clinton B. Wiser | | ... | 3166 |
| | Joseph J. Miller | Jan. | 3, 1893... | 40 |
| | Mary A. Hubbard | | ... | 30 |
| | Charles D. Hubbard | | ... | 10 |
| | George L. Hewins | | ... | 20 |
| | Do. | | ... | 20 |
| | Do. | | ... | 10 |
| | Do. | | ... | 10 |
| | Pauline Arthur | | ... | 5 |
| | William P. Herrick | Jan. | 4, 1893... | 10 |
| | Lester M. Crouch | | ... | 10 |
| | Katie F. Courtney | | ... | 12 |
| | M. Virginia Loma | | ... | 1 |
| | W. W. Deedy | | ... | 4 |
| | B. Frank Fletcher | | ... | 5 |
| | Charles W. Dayton | Jan. | 5, 1893... | 48 |
| | Michael Leen | | ... | 2 |
| | E. J. McCluskey | | ... | 3 |
| | Henry C. Pastorious | | ... | 25 |
| | Maria Patrick | | ... | 212 |
| | John L. Fowler | Jan. | 9, 1893... | 10 |
| | F. V. Buxton | | ... | 18 |
| | A. H. Graves | | ... | 20 |
| | Charles H. Winslow | | ... | 5 |
| | Ellen Erben | | ... | 40 |
| 288 | Francis Lee | | ... | 4 |
| | Warren A. Green | | ... | 130 |
| | Samuel D. Lee | Jan. | 10, 1893... | 40 |
| | John T. Mason | | ... | 10 |
| | Catherine E. Ferguson | | ... | 300 |
| | James A. Ferguson | | ... | 200 |
| | Sidney G. Law | | ... | 20 |
| | Edwin P. Harley | | ... | 20 |
| | Frank Storrs | Jan. | 11, 1893... | 100 |
| | Ellen E. Baird | " | 12, ... | 5 |
| | Clinton B. Wiser | | ... | 98 |
| | Robert B. Crouch | | ... | 97 |
| | A. B. Crooks | | ... | 20 |
| | Francis Lee | | ... | 6 |
| | Josiah K. Burrage | | ... | 15 |

| | | | | |
|---|---|---|---|---|
| | Eliza G. Newhall | | ... | 25 |
| | John B. Clute | | ... | 100 |
| | Rachel J. Farrar | | ... | 10 |
| | Ross Knight | | ... | 5 |
| | Howard M. Martin | | ... | 10 |
| | Michael Leen | Jan. 20, 1893 | ... | 1 |
| | Albert M. Marks | | ... | 10 |
| | Wm. Hill | | ... | 50 |
| | Ross Knight | | ... | 5 |
| | D. Neville | Jan. 13, 1893 | ... | 100 |
| 289 | Mary K. Bacon | | ... | 200 |
| | Wilmina Kinkaid | | ... | 3 |
| | Rose Noble | Feb. 8, 1893 | ... | 80 |
| | Charles L. Sowle | " 9, " | ... | 16 |
| | Rachel J. Farrar | " 13, | ... | 10 |
| | Sylvanus Birch | " 16, | ... | 100 |
| | Mary Elizabeth Werry | " 25, | ... | 14 |
| | Robert B. Crouch | | ... | 3 |
| | Edgar M. Page | March 6, 1893 | ... | 6 |
| | Mary F. Whittaker | " 11, | ... | 3 |
| | Lydia M. White | | ... | 108 |
| | George C. Page | | ... | 45 |
| | B. M. Bates | " 15, 1893 | ... | 80 |
| | David A. Ross | | ... | 40 |
| | Charles F. Ross | " 16, 1893 | ... | 20 |
| | C. B. Wiser | " 28, 1893 | ... | 30 |
| | Francis Lee | | ... | 10 |
| | Lorenzo Harris | | ... | 5 |
| | R. B. Crouch | | ... | 300 |
| | Lorenzo Harris | | ... | 1 |
| | Howard M. Martin | April 11, 1893 | ... | 5 |
| | W. R. Kennard | " 12, 1893 | ... | 500 |
| | Do. | | ... | 500 |
| | Do. | | ... | 500 |
| | Do. | | ... | 500 |
| 290 | Charles A. Berrian | April 14, 1893 | ... | 5 |
| | Jonathan Henninger | " 26, " | ... | 2 |
| | Mrs. E. J. McClusky | | ... | 3 |
| | James E. Bristol | | ... | 2 |
| | Katie T. Courtney | | ... | 11 |
| | Herbert M. Brooks | May 4, | ... | 20 |
| | James M. McCutcheon | " 10, | ... | 1 |
| | John Lawler and Ed. W. Wells | May 12, | ... | 10000 |
| | Metropolitan Club | " 15, | ... | 3 |
| | Lewis Harris | " 15, | ... | 2 |
| | Polly Taylor | May 15, 1893 | ... | 2 |
| | James T. Thomas | | ... | 1 |
| | J. L. Richardson | | ... | 2 |
| | Do. | | ... | 10 |
| | Do. | | ... | 10 |
| | Do. | | ... | 10 |

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|---|---|---|---|---|
| Do. | | | ... | 10 |
| Do. | | | ... | 5 |
| Do. | | | ... | 5 |
| Do. | | | ... | 5 |
| Do. | | | ... | 5 |
| Do. | | | ... | 5 |
| Do. | | | ... | 5 |
| Do. | | | ... | 5 |
| Do. | | | ... | 5 |
| Do. | | | ... | 5 |
| Do. | | | ... | 5 |

291 Regular stock.

| | | | | |
|---|---|---|---|---|
| Charles Cowland | Dec. | 30, 1892 | ... | 20000 |
| Do. | | " | ... | 15000 |
| Do. | | do. | ... | 10000 |
| Do. | | do. | ... | 45000 |
| J. E. Hedges | April | 25, 1893 | ... | 1 |
| Samuel E. Lathrop | " | 26, | ... | 100 |
| George C. Page | " | 26, | ... | 30 |
| Rachael J. Farrar | " | | ... | 10 |
| Sylvanus Birch | " | | ... | 100 |
| Conrad Baer | " | | ... | 20 |
| C. D. Hubbard | " | | ... | 20 |
| Charles R. Lane | " | | ... | 7 |
| Frank M. Milne | " | | ... | 10 |
| Paula Rudolph | " | | ... | 20 |
| Henry D. Baker | " | | ... | 100 |
| Thomas Senior | May | 2, | ... | 1 |
| B. Frank Fletcher | " | 4, | ... | 3 |
| Mary Elizabeth Werry | " | 10, | ... | 16 |
| Lydia M. White | " | 31, | ... | 100 |
| J. J. Hirschfield | June | 5, | ... | 1 |
| Charles F. Forbes | " | | ... | 1 |

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| | | | | |
|---|---|---|---|---|
| Thomas Senior | May | 2, 1893 | Shares, | 1 |
| B. Frank Fletcher | " | 4, | ... | 3 |
| Mary Elizabeth Werry | | 10, | ... | 16 |
| Lydia M. White | | 31, | ... | 100 |
| J. J. Hirschfield | June | 5, | ... | 1 |
| Charles F. Forbes | " | 5, | ... | 1 |

I beg leave to return herewith transcript of the evidence introduced before me as special master together with the exhibits as marked in said transcript.

Respectfully submitted.

C. P. HICKS,
*Special Master.*

Dated Prescott, Yavapai county, Arizona Territory, July 9th, 1898.

On this 11th day of July, 1898, in presence of counsel of the parties, after due consideration, I hereby overrule each and all of the objections made and filed by the defendants Lawler and Wells to my report herein, and herewith return said objections and exceptions to the court to which action the said defendants here and now duly except.

C. P. HICKS,
*Special Master.*

(Endorsed:) No. 2365. C. B. Wiser *et al. vs.* John Lawler *et al.* Report of special master. Filed July 11th, 1898 at 10 o'clock a. m. J. M. Watts, clerk. By H. M. Gibbes, deputy.

293 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

CLINTON B. WISER ET AL., Plaintiffs,
*vs.*
JOHN LAWLER ET AL., Defendants.

Before Hon. C. P. Hicks, master in chancery.

Come now Ed. W. Wells and John Lawler, two of the above-named defendants and present to the master the following objections and exceptions to his report, a draft of which was made out and served upon defendants on the 8th day of July, 1898.

Said defendants object and except to said report of said master upon the following grounds:

First.

For that on the hearing of said cause, before the master, the plaintiffs offered in evidence Plaintiffs' Exhibit 1, before the master, to which these defendants objected, for the reason that no foundation had been laid therefor, and also because it does not appear by whom the expenditures were made prior to October 4th, 1892, nor that the expenditures subsequently made, were made by the Seven Stars Gold Mining Company or by any one else from the money paid in by the stockholders.

Which objection was taken by the master under advisement and said testimony admitted subject to said objection, but
294 said master in his findings, ignored said objections, and considered said testimony, to which action of the master, these defendants except and object.

Second.

And to further make proof under said second issue, the plaintiffs offered in evidence the testimony of Mr. Hazeltine, taken upon the trial of this cause, in the district court, which testimony was objected to by these defendants for the reason that it appears therefrom that the H. H. Warner Investment Company went into possession of and operated the Hillside mine from May 15th, 1892 to June 15th, 1892, when that company surrendered the possession of

the property under the license in the Cowland contract to the Industrial Mining & Guaranty Company, which latter company operated the property under the license to the first day of October, 1892, at which time that company surrendered the property under the license to the Seven Stars Gold Mining Company, and the testimony as offered, does not show the amount of moneys paid by each of these companies, while operating the property.

Third.

And to further make proof, under this issue, the plaintiffs offered in evidence in connection with the testimony of Harold J. Footner, the stock ledger of the Industrial Mining & Guaranty Company, to which evidence these defendants objected for the reason that it does not contain any evidence of any stock issued to the English
295 guaranteed stockholders and because there is nothing contained therein showing any stock to have been issued to the English common stockholders.

And for the further reason that the alleged stockholders set forth in said stock ledger (Exhibit 3) before or at the time of their several purchases had no notice or knowledge of any act of these defendants, which would render them, or the property in controversy, liable for the payment of such stock, nor is there any testimony showing that any of the shares of the capital stock of the Seven Stars Mining Company was purchased by any of the stockholders relying upon anything that Lawler and Wells may have done or said, or not done or said.

And further, that it is not shown that any of the stockholders have rescinded their contract or purchase of stock, but it is shown that all of the stockholders have received dividends upon their stock, and it is not shown that there has been any offer to return such dividends, nor has it been shown that these defendants knowingly, received any money paid in by the stockholders, and all of the funds paid into the guaranty company by the stockholders, have lost their identity as trust funds, by deposit by the guaranty company into a common fund.

Fourth.

For that on the hearing before the master the plaintiffs were permitted to show the amount of monies paid in by purchasers
296 in England of guaranteed stock, over the objection of the defendants, that it appears from the books in evidence that no stock was ever issued to the English stockholders.

Fifth.

For that on the hearing before the master, the plaintiffs were permitted to prove by witness, Harold J. Footner, the amount of monies paid to Lawler and Wells, over the objections of the defendants, for the reason that it had not been shown that the monies paid by the purchasers of stock could be followed into the hands of Lawler and Wells.

Sixth.

For that the master erred in admitting testimony as to the sum of $32,500 being paid in for operating expenses of the property in April or May, 1893, over the objection of defendants, because the books in evidence show that the money was borrowed from O. E. Warner, and did not come from the sale of Seven Stars stock.

Seventh.

For that the master erred, on the hearing, in permitting the plaintiffs to prove the amount of money paid into the guaranty company on account of sales of common stock, over the objection of defendants, to the effect that the American prospectus does not make any statements concerning the common stock of the corporation.

Eighth.

297 For that the master erred on the hearing in permitting the plaintiffs to introduce Exhibit J, over the objection of these defendants, that it appears upon the face of that exhibit that no certificate of stock was ever issued to the English guaranteed alleged stockholders.

Ninth.

For that the master erred in permitting the plaintiffs to read in evidence Exhibit K over the objection of these defendants, for the reason stated in the introduction of Exhibit J, and to Exhibit E attached to Footner's deposition, before set forth.

Tenth.

For that the master erred in refusing the motion of these defendants to strike out the evidence of Mr. Harold J. Footner on direct examination, for the reason stated in said motion.

Eleventh.

For that the master erred in permitting the plaintiffs to introduce the deposition of M. B. Hazeltine, appearing in the reporter's notes over the objection of these defendants.

Twelfth.

For that the master erred in permitting the plaintiffs to read in evidence the deposition of Cecil Quentin, over the objection of defendants, because the evidence before the master shows that there was no guaranteed stock issued to alleged purchasers in Eng-
298 land, nor were there any purchasers in England of such stock.

Thirteenth.

For that on the trial before the master, these defendants offered in evidence Defendants' Exhibits 1, 2, 3, 4, and 5, tending to show the incompleteness of the books and the confusion of funds, to which offer to read the plaintiffs objected, which objection was by the

master taken under advisement, and the evidence taken under consideration, subject to the objection, and that it appears upon the face of the findings that said evidence was ignored by the master and not considered, to which action of the master, these defendants here except and object.

Fourteenth.

For that it appears that on the hearing before the master, these defendants introduced evidence, over the objection of plaintiffs, tending to prove that the monies received by the guaranty company for the sale of Seven Stars stock, went into a common fund, which was used in the general business of the guaranty company, and thereby lost its identity, so that the same could not be followed out of said common fund. Which objection was taken by the master under advisement, and upon the face of the findings, it appears that the master ignored and rejected said evidence, to which action of the master these defendants here — now except and object.

299 For that each and all the objections mentioned in exceptions number second to ninth, both inclusive, were taken under advisement by the master and the evidence objected to considered, and by the findings of the master, said objections and each of them, were overruled and to which rulings these defendants here and now except.

For that the motion mentioned in the tenth subdivision thereof, was taken under advisement by the master and by the findings the said motion was overruled, to which ruling these defendants here and now except.

300 These defendants object and except to the form of said report of the master herein upon the following grounds:

First.

The finding to the first order of reference to the court is indefinite and uncertain, in this to wit: It finds that since the first day of May, 1892, $231,139.82 was received by Lawler and Wells. It is further found that said Lawler and Wells received $51,000 from H. H. Warner, and that the books of the guaranty company show that they received $112,339.96; but it cannot be ascertained from that finding, whether the two last mentioned sums are a part of the sum of $231,139.82, or are to be added thereto.

And further, the master does not find whether any moneys was received from the Seven Stars Gold Mining Company.

The master does not find whether or not any or all of the monies paid by the Industrial Mining & Guaranty Company to Lawler and Wells, included in the sum of $231,139.82, were the monies or any part of the monies, received by the gauaranty company, from the sale of Seven Stars stock.

Second.

These defendants object and except to the second finding of said master, for the reason that the same is indefinite and uncertain in

this, to wit: That said finding fails to state and show the amounts expended:

1st. For the operation of said mines.

2nd. For the purchase of machinery.

301 3rd. For the purchase of supplies of every kind and nature, from May 12th, 1892, to September 10th, 1893.

Nor does said finding state and show by whom said money was expended or used or from what source it was derived. Nor does said finding show the different items or amount used in and about the operation of said mines, nor for the purchase of machinery, nor for the purchase of supplies from September 10th, 1893, to the date of the order of reference. Nor does it show by whom the same was furnished, used and expended.

It is also indefinite in this: It finds that $130,223.89 was expended in the operation of the mines, the purchase of the machinery, and the purchase of supplies, and fails to state not only the amount paid for each of the aforesaid items, but it fails to show what amount of said general sum was expended before the formation of the Industrial Mining & Guaranty Company.

It also fails to show what amount of said sum was expended after the formation of said company.

It fails to show what amount of said general fund was expended after the sale of stock of the Seven Stars Gold Mining Company began and whether or not any of that stock money was paid on either of the aforesaid items of expenditure.

Third.

That the finding contained under the head of 5th order of reference to the court is indefinite and uncertain in this:

302 1st. It does not show by whom or which company the sum of $254,892.77 was received on sales of stock.

2nd. It does not appear by whom or which company, received the sum of $129,275.72.

3rd. It does not appear by whom or which company, received the sum of $2,583.60.

4th. It does not appear by whom or which company, received the sum of $123,852.33.

That the findings contained under the head of the 5th order of reference of the court, is contrary to and not sustained by the evidence in this:

1st. That the books of the Seven Stars Gold Mining Company do not show that any cash was received by that company or any company.

2nd. Because the said finding fails to show in any way whether or not the amount so received, was expended by the mining & guaranty company or the Seven Stars Gold Mining Company; or, whether or not any portion of said amount was expended in the operation of said property, or in the purchase of machinery and supplies; or whether or not any portion of it was paid to Lawler and Wells upon the purchase price of said mines, and whether or not it was lost in

the confusion of funds in the general business of the Industrial Mining and Guaranty Company.

303 That the said findings are contrary to and not sustained by the evidence, in this:

That the evidence does show that H. H. Warner, individually sold shares of stock amounting to $1000 and that these amounts were never paid into the guaranty company, and the master makes no deduction from the amount of sales of Seven Stars stock on that account.

Second.

That the evidence does show that the Bank of Arizona deposited to the credit of Lawler and Wells, on account of the purchase-money on May 31st, 1893, $4500, which was borrowed money and is not deducted from the sum of $112,339.96.

Third.

That the evidence does show that $2200 was deposited by the Bank of Arizona, to the credit of Lawler and Wells, on account of the purchase price of the Cowland contract on July 1st, 1893, and the evidence does show that said sum was not monies received from the sale of stock of the Seven Stars Gold Mining Company, and the master does not deduct the same from the said sum of $112,339.96.

Fourth.

That the evidence does show that the sum of $4500 deposited on August 1st, 1893, by the Bank of Arizona to the credit of Lawler and Wells, on account of the purchase price mentioned in the Cowland contract was received from sources other than from the

304 sale of Seven Stars stock, and the master does not deduct the same from the said sum of $112,339.96.

Fifth.

That the evidence does show that the sum of $32,000 deposited by the Bank of Arizona, for account of the Hillside mine in May, 1893, was monies received from sources other than from the sale of Seven Stars stock, and the master does not take that sum into consideration in deducting the same from the amount of monies that were used in the operation of the Hillside property.

Sixth.

That the evidence does show that the Seven Stars Gold Mining Company received from the gross proceeds of the sale of ores and bullion from the Hillside mine, the sum of $18,384.33, more than was paid over to Lawler and Wells, and the master does not take that amount into consideration and deduct the same from the amount charged to have been expended.

Seventh.

That it appears from the evidence that dividends were declared and paid to the various stockholders of the Seven Stars Gold Mining

Company, sums aggregating $11,533.07, which amount was not taken into consideration by the said master or deducted from any monies paid in by the guaranty company on account of sales of stock of the Seven Stars Gold Mining Company.

305 That the findings of the master are insufficient and incomplete, in this, to wit: that it does not find that the operations of the guaranty company extended to and over sundry other business transactions, concerning which that company expended the sum of $824,154.13, which the evidence shows was deposited in the general bank account of that company in the Continental national bank, as a common fund, checked against for all disbursements concerning its general business transactions.

That it does not appear in the findings that H. H. Warner, whom the court finds in its interlocutory decree was the real party who agreed to purchase the property in controversy, deposited with said guaranty company large sums of money, which was placed by said company into its common fund, aggregating $272,677.27

That it does not appear from the findings that any monies disbursed by the guaranty company were charged against the Seven Stars Gold Mining Company on account of any monies received by the guaranty company from the sale of Seven Stars stock.

J. F. WILSON,
HERNDON & NORRIS,
E. M. SANFORD,
*Attorneys for Defendants John Lawler & Ed. W. Wells.*

(Endorsed:) 2365. Filed July 11, 1893, at 10 o'clock a. m. C. P. Hicks, master. Refiled by clerk July 11th, 1898 at 10 o'clock a. m. J. M. Watts, clerk. By H. M. Gibbes, deputy.

306 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

CLINTON B. WISER, C. M. FIELD, JAMES A. FERGUSON, DORSAY Neville, Mary M. Heath, John J. Miller, John A. Kerr, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorns, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten

*versus*

JOHN LAWLER, ED. W. WELLS, INDUSTRIAL & MINING GUARanty Company, Seven Stars Gold Mining Company, and John Griffin, Receiver of the Industrial & Mining Guaranty Company and of the Seven Stars Gold Mining Company.

And now this cause coming on to be heard upon the motion and application of the plaintiffs for the entry of a further decree herein and to carry into effect the adjudications and decree heretofore made and entered in this cause on September 30th, 1897, and the plaintiffs being represented by their counsel, G. W. Kretzinger, T. W. Johnston and M. F. Gallagher, and the defendants John

Lawler and Ed. W. Wells being represented by their counsel Herndon & Norris, E. M. Sanford and J. F. Wilson, the default of the defendants Industrial & Mining Guaranty Company and Seven Stars Gold Mining Company having been duly entered in this cause for the want of an answer, and the defendant John Griffin, receiver, answering *pro se;*

And it appearing to the court that the above-entitled
307 cause came on for hearing before his honor, Judge Hiram C. Truesdale, sitting as a court in equity in the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, on the 21st day of September 1897, being one of the days of the June term, A. D. 1897, of said court, and that said cause was then heard upon the pleadings and the evidence of the parties then presented, and the arguments of counsel having been heard, the said court entered his findings of fact in this cause and his conclusions of law thereon, and thereupon made and rendered its decree herein, as the record of this cause, to which reference is here made, more fully shows; which findings of fact and conclusions of law thereon and decree of the said court, were and are in the words and figures following, to wit:

308 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

WISER ET AL., Plaintiffs,
*vs.*
LAWLER AND WELLS, Defendants.

The above-entitled action came on for trial in the above-named court on the 21st day of September, A. D. 1897, before the Hon. Hiram C. Truesdale, judge of the third judicial district, the Hon. Richard E. Sloan being disqualified to sit therein; and a motion having been made by the defendants Lawler and Wells, that certain issues be submitted to a jury, which said motion having been denied by the court, said cause proceeded to trial before the court without a jury; and having heard the evidence offered by the respective parties, and the arguments of their counsel, the court finds the following facts:

*Findings of Fact.*

First.

That shortly prior to the 12th day of May, 1892, H. H. Warner accompanied by one Rickard, visited Prescott, Arizona, and entered into negotiations with the defendants Lawler and Wells in regard
to the purchase of a certain group of mines situated in the
309 Eureka mining district, county of Yavapai, Arizona, and known as the Hillside mines, and which were then owned by, and in the possession of the defendants, Lawler and Wells. That, as a result of these negotiations said Warner and Rickard visited said mines in company with said Lawler, for the purpose of exam-

ining them, and ascertaining their value. That as a result of such examination and investigation, said parties returned to Prescott, and there after further negotiation, in which said defendant Wells also participated, said parties made and entered into an agreement wherein and whereby said Lawler and Wells agreed to sell said Warner said group of mines, together with all appurtenances for the sum of four hundred and fifty thousand dollars, and on the said 12th day of May, 1892, said Lawler and Wells duly made and executed their certain deed in writing, wherein and whereby they conveyed to one Charles Cowland said group of mines and mining claims, all of which are fully described in the complaint herein; which said deed contained the usual covenants of title and warranty, and was executed by the wife of said Wells, and which said deed, together with an agreement known as an "escrow agreement," and which was executed by said defendants simultaneously with said deed, were deposited in the Bank of Arizona in the city of Prescott, where they remained until they were delivered to said defendants by said bank at the time and under the circumstances hereinafter set out.

310 Second.

That while said Cowland was named as grantee, in said deed, and was the one directly obligated by the escrow agreement, to make the payments therein provided for, said Cowland was in truth and in fact, simply the agent of said Warner, and it was so understood by all the parties to the transaction, and in furtherance of that understanding, said Warner made the only payment made to the defendants at the time of the execution of said deed and agreement above referred to, and in addition thereto, guaranteed to Lawler and Wells the future payments provided for therein.

Third.

That at the time of entering into negotiations for the purchase of this group of mines, said Warner was supposed to be a man of large means, and amply able to purchase and pay for said mines, and he so represented himself to said Lawler and Wells, and was so represented by said Rickard; but it was his intention and expectation to organize a corporation with a large capital to take and hold the titles of these properties and to place the stock thereof upon the market for general sale or subscription, of which said intentions and expectations said Lawler and Wells had actual knowledge and notice during the progress of the negotiation which led up to the purchase and to the execution and delivery of said deed and escrow agreement and the deposit thereof in the Bank of Arizona as
311 aforesaid.

Fourth.

That shortly after the execution and delivery of said deed and contract of May 12th, 1892, and in accordance with the terms and conditions thereof, said Lawler for and on behalf of himself and Wells, did deliver to said Warner, or his duly authorized agent, the

possession of all of said mines and mining property together with the appurtenances thereto, all as described in and referred to in said deed and said contract of May 12th, 1892.

Fifth.

That at the time of executing said deed and contract, said Warner paid to said defendants the sum of twenty thousand dollars and shortly thereafter, the exact time being immaterial, the further sum of thirty-one thousand dollars, or thereabouts; and that no other, or further sums, were ever paid by said Warner thereon, all subsequent payments having been made in the manner, and from the sources hereinafter named.

Sixth.

That on or about the 15th day of June, A. D. 1892, said Warner organized or caused to be organized under the laws of the State of New Jersey, a corporation known as the Industrial Mining and Guaranty Company, the exact nature and purpose for which this company was organized does not appear, except as disclosed
312 by its charter, and the manner in which it dealt with this property and the other defendants herein. To this corporation, said Cowland did, shortly after its organization, make, execute and deliver a deed for all the mines and mining properties described in said deed from said Lawler and Wells, and which also contained the usual covenants of title and warranty, and in which the consideration named was four hundred thousand dollars.

That immediately thereafter said Industrial Mining and Guaranty Company went into possession of all the said mines, mining properties and appurtenances and continued in the open, notorious and exclusive possession thereof, using, occupying, working and operating the same until on or about the first day of October, 1892.

That on or about the ninth day of August, 1892, said Warner organized or caused to be organized, under the laws of the State of New Jersey a corporation known as the Seven Stars Gold Mining Company, with a capital stock of three million dollars, divided into six hundred thousand shares at five dollars each, and that shortly thereafter said Warner and his associates caused the said Industrial Company and said Seven Stars Company to enter into an arrangement whereby the former agreed to convey the aforesaid mines and mining properties and appurtenances to the latter free and clear of any and all incumbrances, upon the condition: that said Seven Stars Company should provide itself with two hundred thousand dollars working capital,
313 and in addition thereto, pay to said Industrial Company the sum of two million eight hundred thousand dollars, either in cash, or in its stock at the face value thereof. This arrangement was never carried out, but some time about the first of October, 1892, said Industrial Company delivered to said Seven Stars Company the possession of all the mines and mining properties heretofore referred to and described in said deed and contract of May 12th, 1892. That thereupon, said Seven Stars Company en-

tered into possession of all and singular the said mines and mining properties, and all the appurtenances thereto; and thereafter remained in such possession and used and occupied the same and worked the said mines and the mill situated thereon and expended large sums of money in payment for new and additional machinery and appliances, for use and necessary for use in the operation thereof, and in the payment for labor and supplies necessary in the use, operation and development of said mines as contemplated and provided for in said agreement of May 12, 1892. And said Seven Stars Company continued so to do with the full knowledge, acquiescence and consent of said Lawler and Wells until dispossessed by said Lawler in the manner and under the circumstances and conditions hereinafter set out.

Seventh.

That on or about the time of the organization of said Seven Stars Company, said Warner and his associates other than the
314 plaintiffs herein, undertook the preparation of an elaborate prospectus of said Seven Stars Company, which it was his intention to extensively circulate by mail and otherwise, throughout the United States of America, and one of similar nature and import for circulation throughout Great Britain, and still another which had been translated into the French language, which it was his intention to use in that country as were the ones for use in America and Great Britain, for the purpose of inducing the public to purchase or subscribe for shares in this company; and during the months of September and October, 1892, a vast number of these prospectuses, together with a map showing the relative location of the various mines and mining properties above referred to, as well as the location and extent of the ore veins and the amount of development work already done thereon, were circulated throughout the United States amounting in the aggregate to over two hundred thousand, and in Great Britain to upwards of eighty thousand, whether the French prospectus was ever sent out or any of them, the evidence fails to disclose.

Eight.

This prospectus contained, among other things, the statement that said Seven Stars Company was organized for the purpose of acquiring on October, 1st, 1892, as a going concern, the mines and mining properties and appurtenances fully described and set out
therein, and without further expense to the stockholders of
315 said company; it also contained assertions in regard to the title, reciting that certain of the properties described in the prospectus and the accompanying map were held under United States patents, also that said company, or said property, was provided in a very extensive manner with necessary buildings, such as company trading store, offices, blacksmith and carpenter shops, mills and reduction works, engines and boilers, etc. Said propectus also contained extracts from reports of various mining engineers, and among others from a report of one Blauvelt, with report, together with map showing the surface and underground workings of said mines

and properties, with reports showing the smelter receipts of these properties from June 1887 to March, 1892, were turned over to said Warner by said Lawler and Wells at the time of the execution of the deed and agreement of May 12, 1892, or shortly thereafter.

Ninth.

During the time that this prospectus was in the course of preparation, defendant Wells was in New York city, and had an interview with Warner at that time; but whether or not at said interview Warner said anything to Wells in regard to the Seven Stars Company and its organization, or in regard to the preparation of this prospectus for said company, I am unable to state; that during the time that this prospectus was in the course of preparation, the defendants Lawler was in the city of New York, wherein was
316 situated the principal office of said Warner, said Industrial Company, and the eastern office and business and financial headquarters of the Seven Stars Company; that said Lawler remained there five days, and while there spent most of his time at the office of said Warner and said companies which were all closely connected together, or in the company of Warner and his associates; and was aware that this prospectus or some prospectus, was being prepared, which had reference to these mines and mining properties.

While Mr. Lawler denies this, I think the preponderance of the evidence clearly shows that such was the case, and the attendant facts and circumstances aside from such preponderance, strongly corroborates this view. The fact is admitted that there was some talk at this time in regard to certain original ore and smelter receipts, which Warner presumably and as some of the evidence shows, desired and requested of Lawler for the purpose of incorporating them into and making them a part thereof; these facts and circumstances all tend to outweigh the uncorroborated statement of Lawler.

Furthermore, it is almost inconceivable that these parties, who, all the facts show, were so full of this enterprise, should not have been anxious to make known and that Lawler and Wells, who had such a very large financial interest at stake, should not have been anxious to know all that they were doing and expected to do in order to further the scheme and insure its success. And it
317 seems almost equally incredible that Lawler and Wells should never have communicated together in regard to what occurred and what information was received by them at the time of their respective visits to New York. That a large number of these prospectuses were sent by express, addressed to defendant Lawler at the Burke hotel in Prescott; but whether they ever came into his possession or his notice at the time or at all, I am unable to state; but some time early in the fall of 1892, he was shown a copy thereof in a New York paper. That a copy of said prospectus was also received by defendant Wells about the same time; but whether or not said Wells ever read said prospectus or was aware of its contents, I am unable to state. That there was also a large number of those

prospectuses sent to the Bank of Arizona about the same time, some of which were sent voluntarily by the parties in New York, while others were sent afterwards, upon the written request of one Hazeltine, who acted under instructions from the cashier of said bank; how said cashier knew that said prospectus was in existance, unless the bank had previously received others of the same kind, I am unable to state. And while the defendant Wells was a heavy stockholder in said bank during the time, and said bank was the financial agent of both Lawler and Wells, I am unable to find whether said Lawler and Wells, or either of them, knew of their being sent, or saw them after they were sent, or ever had any personal knowledge of their existence.

Tenth.

318 That during all the time from the 12th day of May, 1892, up to and including the first day of September, 1893, said Bank of Arizona was the agent and depositary in trust of this deed and escrow agreement, and was likewise for the purposes of these transactions the financial agent for Warner and the Industrial Company and the Seven Stars Company in Prescott, as well as the financial agent for Lawler and Wells, and received and paid out all moneys which were paid to Lawler and Wells, either from the gross receipts or ore or bullion from the operation of these mines under the Cowland agreement, as well as all moneys received for their account from any source on account of any of these transactions except the fifty-one thousand dollars paid by Warner as hereinbefore set out; and, they also received and paid out upon check, or otherwise, a large part of all the funds received and expended by the Industrial Company or the Seven Stars Company in payment for material machinery, labor, supplies and other expenditures made for and used in the improvement of this property, and the operation and development thereof, and in the production of ore and bullion therefrom of May 12th, 1892; but I am unable to say from the evidence whether Lawler and Wells, or either of them, had knowledge in regard thereto.

Eleventh.

That by the use and circulation of the prospectuses, as and in the manner hereinbefore set out, a large amount of the
319 stock of said Seven Stars Company was sold to the plaintiffs and other parties throughout the United States and Great Britain, the exact amount is immaterial for the purpose of any decree that will be entered at this time; but, which aggregates two hundred and fifty thousand dollars par value, and all, or the greater part of which was paid for at par or more, and a large part of which was subscribed and paid for under the belief that said mines and mining properties were owned by said Seven Stars Company, and that said company was a going and profitable enterprise; and that none of the plaintiffs herein or any of the stockholders of said Seven Stars Company other than said H. H. Warner, knew that said Seven Stars Company did not own said mines and mining property,

or that said Lawler and Wells had or claimed any right, title or interest therein.

Twelfth.

That at the time said Lawler and Wells executed said deed and contract of May 12th, 1892, they believed and had reason to believe that said Warner was financially responsible and able to purchase and pay for said mines and mining properties and to improve and develop them in accordance with said agreement. But said parties were informed and knew at that time, that he intended to organize a corporation and to put the stock on the market; but whether or not they were informed or had notice at that time that he did not intend to pay the purchase price agreed upon, or only as
320 he realized it from the sale of the stock of his projected — I am unable to state.

That some time prior to the 28th day of October, 1892, Cowland and Warner, as a result of previous negotiations between them and said Lawler and Wells, secured from the latter an extension of the time for the payments required under said contract of May 12th, 1892, and at or about that time, said Wells and said Lawler were informed and had actual notice that said Warner, or said Cowland, and both of them, were either unable or had no desire or intention of making any further payments on the said contract of May 12th, 1892; and were either obliged or intended to look to the receipts from the sale of stock in this corporation had from ore and bullion to make the future payments; and I find as a fact that all payments made to, and received by Lawler and Wells from the time — these negotiations which led up to the extension agreement of October 28th, 1892, were received by them with actual knowledge and notice of Warner and Cowland's intentions and that all such payments were received by them with constructive notice that they were derived from the sale of the stock of the Seven Stars Company, and that all additions and improvements made on these properties and all expenses incurred in the production of ore and bullion therefrom were paid from funds received from a similar source.

Thirteenth.

That there has been paid to said Lawler and Wells for and
321 on account of the purchase of this property the sum of two hundred and seventeen thousand dollars ($217,000) or thereabouts, and in addition thereto, a large amount of money for machinery and improvements thereon, and in the development thereof, the exact amount of which, as well as what proportion of the said several sums was derived from the sales of the stock of the Seven Stars Company, it is unnecessary to determine for the purpose of this decree.

Fourteenth.

That on or about the 8th day of May, 1893, said Warner being insolvent, made an assignment for the benefit of his creditors to one Hedges; that thereafter, through negotiations carried on partly be-

fore that date, through said Hedges, with defendant Wells in Prescott, and Lawler in Chicago, and partly thereafter by Warner himself, an arrangement was made and entered into with Lawler and Wells, they having actual notice of Warner's then financial condition, for an extension of time for certain payments, about to become due on said Cowland agreement; and as a result of those negotiations, an agreement for an extension was entered into, in which, among other things, it was provided that certain debts of the Seven Stars Company which were then pressing, and which were liable to involve these properties, and which amounted to about forty thousand dollars, should be paid and discharged, that Lawler should be made manager for said Seven Stars Company, and that Lawler and Wells should have as a bonus stock in the Seven Stars Company,
322 of the par value of fifty thousand dollars, all of which was acceded to by Warner and the directors of the Seven Stars Company. And on the 13th day of May, 1893, said Lawler was made manager of said Seven Stars Company, accepted said position and went into possession of said mines and mining properties for and on behalf of and in the interest of said company, and not otherwise. That at the time of making this arrangement Warner induced Warner Miller of New York to raise, or assist in raising, forty thousand dollars necessary to pay off the pressing obligations of the company above referred to; and said Miller did provide said funds; but under just what circumstances, nor whether defendants Lawler and Wells had notice of who provided the funds, or under what circumstances, I am unable to state. But from the foregoing facts they had notice that such funds were not the funds of Warner, and actual notice that said funds were used in the payment and discharge of indebtedness which was a charge against said property.

That after said Lawler took possession of said property for and on behalf of said Seven Stars Company, he closed them down, and no effort was made to operate the same, and the same remained idle up to and including the first day of September, A. D. 1893.

Fifteenth.

That said Lawler was made manager and took possession of the said property as aforesaid, said Seven Stars Gold Mining
323 Company continued to make payments for and on account of said Cowland contract, as amended and modified in May, 1893, and made each and every payment thereunder up to and including the month of August 1893; which said payments and all thereof, were made to, received and retained by Lawler and Wells, with full knowledge and notice of the facts and circumstances aforesaid. That said company did not make the payment which became due thereunder on the first day of September, 1893; and shortly thereafter said Lawler took possession of said mines and mining properties, or continued in the possession thereof, which had been vested in him by and in the interest of the said Seven Stars Company, and asserted and ever since that time has continued to assert that he no longer held or holds the same as manager for said company, but for and on his own behalf and that of said Wells.

Sixteenth.

That some time during the month of August, 1893, the defendant Griffin was appointed receiver of the said Seven Stars Company, under and by virtue of an order of the court in chancery in and for the State of New Jersey; that said Griffin did not, nor has he ever taken or attempted to take, possession of the mines and mining properties described in the complaint herein.

Seventeenth.

That these plaintiffs and all of the other stockholders ex-
324 cept Warner and those associated with him in the management of said company, were ignorant of all these facts and circumstances, and had no notice in regard thereto, until some time prior to the commencement of this suit; and that at a meeting then held at which there was a large number of the stockholders present, these plaintiffs were authorized and directed to bring this suit on behalf of themselves and all others in like estate.

That said defendants Griffin, receiver as aforesaid, was there present, and demand was made upon him to institute this action, which demand was refused.

325 *Memoranda of Decision.*

The foregoing facts, it seems to me, are the salient facts in this controversy; certainly all the facts that are necessary to find for the purpose of any decree that can be entered at this time.

A vast amount of testimony has been introduced, much of which is more or less contradictory in its nature, and a great deal having only an incidental, if any, bearing on the case. The arguments of counsel have likewise taken a wide range, yet, in my view of the case, the facts entitled to controlling weight and consideration, as well as the principles of law applicable, are comparatively few.

From the evidence offered, it is claimed by the plaintiff on the one hand, that they are entitled to a decree of this court that Lawler and Wells have no right, title or interest in this property, or any claim thereto, which they are entitled to assert against these plaintiffs.

Plaintiffs also claim that Lawler and Wells should account to and pay over to the corporation for the use of plaintiffs, or the plaintiffs themselves, all moneys received by Lawler and Wells, both the amounts paid from the receipts of the sale of stock in said Seven Stars Company, as well as all sums received by them from ore and bullion during the time said company was in possession, and work-
ing and operating these properties; claiming that these de-
326 fendants, by their acts, of omission, and commission, by their words and by their silence when they should have spoken, that they have estopped themselves, not only from asserting any right, or title to these properties, but that by their said acts and words and silence, they participated in this fraud to such an extent and in such a manner that they can be called for all benefits received thereunder.

The defendants, on the other hand, deny this, in their answer and in their cross-bill and claim that neither the plaintiffs nor any one on their behalf, have any right, title or interest in said properties, or any thereof, which they can assert against these defendants, or, if any, only the right to make the payments required under the Cowland agreement as modified by the various supplemental agreements attached to their cross-bill; or, in other words, they claim and assert that plaintiffs have no other or greater rights and are not entitled to any more consideration than Cowland or Warner or the Industrial Company, either one or all of them, were he or they, or it, here seeking the relief from this court prayed for in the bill.

To neither of these claims or assertions can I give my assent.

It is a fundamental principle of equity jurisprudence that "he that comes into a court of equity, seeking equitable relief,
327 must do equity." This doctrine is as old as courts of chancery themselves, and is the foundation upon which the great edifice of equity jurisprudence has been constructed. The word equity had its origin and was derived from a word whose various meanings were synonymous with what was right and fair and just, as between man and man. Rules of equity are but the enunciation of that great principle of ethics which is the underlying principle of all rights and justice, "do unto others as you would they should do unto you."

The claims of either side, if sustained, it seems to me, violate these principles. Weighed in the balance by themselves and they incline the scales to the opposite extremes of what are the real equities of this case. If the court should by its decree, declare that Lawler and Wells have no right whatever to this property, and that plaintiffs are entitled to take the same and all thereof, free and clear of any and all rights or interests which Lawler and Wells have therein, and in addition hereto, compel them to return all moneys received by them thereon, it would be equally, if not, more harsh, inequitable and unjust than to decree that these plaintiffs must raise and pay over to these defendants this vast sum of money within any reasonable time that the court might order, or be forever barred of all right therein and thereto.

The one seeks equitable relief in an inequitable manner, or, at least, to an inequitable extent, while the other stands in a court of equity asking and seeking the strict enforcement of a naked legal
328 right under an agreement unknown to the parties against whom it is sought to be enforced, and who, in any view of the case, are equally innocent with themselves. That these stockholders have been the innocent victims of an outrageous fraud, no one who has heard this testimony can for a moment doubt. No matter what Warner's hopes, expectations and intentions were in the inception of this transaction; no matter how innocent of any wrong intention Lawler and Wells, or either of them were at the start, and, if you please, during all the course of the various transactions which led up to the present condition of affairs, the fact nevertheless remains that these plaintiffs have been induced by fair means or foul, either wisely or unwisely, to pay out upwards of three hun-

dred thousand dollars, the greater part of which has gone directly or indirectly into the pockets of these defendants. No matter how or in what manner, or to what extent Warner and his cohorts imposed on and deceived Lawler and Wells, the fact nevertheless stands out bold and prominent that they are the only ones who have not suffered thereby; and that these plaintiffs, as a final result of all these transactions and dealings, between Lawler and Wells, are the victims of a great wrong of which the defendants have reaped almost the entire benefits and for which they have no redress, if this court is powerless to afford them any relief.

At the same time it is not the duty, nor is it within the
329 province of a court of equity to inflict punishment upon one party to a suit on account of his misconduct, except in so far as it is necessary in order to protect the rights of one who is innocent; nor is such innocent party entitled to be placed in any better or more advantageous position than he would have been had the wrong not been committed; while, on the other hand, if these defendants have by their acts and words and silence and by the acceptance of the fruits and benefits of the fraudulent acts of others, placed themselves in such a relation with these plaintiffs, either consciously or unconsciously, as to impose upon them any duty or obligation to the plaintiffs, then that is a relationship which they cannot take on and put off at pleasure, but is one which is in the eyes of the law, binding and irrevocable forever.

From the foregoing, it seems to me that the question and the only question is: are these defendants in any way to blame or responsible for the condition in which plaintiffs find themselves. Have they received and accepted the fruits and benefits of the fraudulent acts of Warner and his associates as regards these plaintiffs, under such circumstances and conditions as to impose upon them any duty or obligation to treat plaintiffs in a fair and equitable manner; or, in other words, do all the facts circumstances and conditions surrounding these transactions, constitute as against plaintiffs, a constructive fraud, such as will authorize a court of equity to
330 grant plaintiffs relief therefrom; and prevent defendants from enforcing against them their strict, naked, legal rights under the Cowland agreement?

For, *if* cannot be, and is not claimed that there is anything in this case showing, or tending to show that Lawler and Wells were guilty of any actual fraud, or any positive deception or misrepresentation practiced upon any of these stockholders in order to induce them to part with their money; for up to a certain time at least, they were all strangers, one to the other, strangers in fact and strangers in law owing a duty, one to the other.

The fraud, if any, then, is constructive, such as the law infers either from the relation of the parties or the circumstances and conditions by which they are surrounded; and it belongs to a class of constructive frauds of large extent and which are unknown in courts of law; and over which courts of equity exercise an exclusive and at the same time, a very salutary jurisdiction. It consists of that class of frauds wherein a man, designedly or knowingly, produces

a false impression upon another who is thereby drawn into some act or transaction injurious to his rights and interests. No one can deny that if a party by wilful suggestions of a falsehood prejudices another who has a right to a full and correct representation of the fact, his claim ought in conscience to be postponed to that of
331 the person whose confidence was induced by the representations. Can there be any real difference between an express representation and one that is naturally or necessarily implied from the circumstances?

The law, as I understand it, is that a party who enables another to commit a fraud, is answerable for the consequences; and this is true, even though he do it innocently and unconsciously, if, after being fully advised of the effect and result of his innocent and unconscious acts, he shares in the results and benefits of the false impressions so induced. In many cases, a man may be innocently silent, but, in other cases, he is bound to speak out, and his very silence becomes as expressive as if he had openly consented to what was said or done and had become a party to the transaction. Thus, if one having title to real estate which is offered for sale, and knowing his title stands by and encourages the sale, or does not forbid it, or make known his title and claims thereto, he is estopped to dispute the validity of the purchaser's title; and this is so, whether he receives the consideration or not; how much stronger then are the equities of the purchaser under those circumstances when it can be shown that the consideration paid to the fraudulent vender passed into the hands of the real owner. It is also true that if a party having title stands silently by and allows an innocent purchaser to make improvements and expend money without giving him notice, courts of equity will not allow him to assert his title against
332 the purchaser, certainly not without at least indemnifying the purchaser for his improvements. How much more forcible is that rule applied to a case where the real owner of the legal title received, accepted and retained all of the direct benefits and earnings of such improvements and expenditures. The reason of the rule being that where one of two innocent persons must suffer a loss, -here one has misled the other, he who is the cause or occasion of that confidence by which the other has been misled and his loss occasioned, ought to bear it.

It is not, however, every concealment, even of facts material to the interest of a party which entitles him to the interposition of a court of equity. The case must amount to the suppression of facts which one party, under the circumstances, is bound in conscience and duty to disclose to the other, and in respect to which, he cannot innocently be silent.

The question is not, whether an advantage has been taken which in point of morals is wrong, or which a man of delicacy would not have taken; but is essentially necessary, in order to set aside the transaction, or to grant relief from what might perhaps be an otherwise harsh and unconscionable advantage, not only that the party should have been misled and a great advantage should be taken

but there must also be an obligation on the party to disclose that which has been concealed.

This, I take it, to be the law, and these are the principles
333 which are applicable to the case at bar; and it only remains to apply them to the facts herein and to determine whether or not there is anything, or, if so, sufficient in the record before this court to justify it in saying that these defendants were in duty and good conscience bound to make known their rights and title to this property which they now claim, or were they such strangers to all defendants, and at all times, and to all the circumstances, conditions and transactions which resulted in the plaintiffs' present unfortunate condition, that they could, regardless of those circumstances and conditions, regardless of the sources from which the funds to make those payments were derived; regardless of the representations that Warner and his cohorts did, or might make, in order to induce the contribution of these funds from the various stockholders, that they are in equity and good conscience, entitled to enforce their rights and claims under and by virtue of the terms and conditions of the agreement of May 12, 1892; regardless of what will, or might be the result *of* these plaintiffs.

While in my judgment, there is no single act of these defendants which, perhaps, taken by itself, would have been sufficient to charge them with any such duty as the law requires to disclose the facts concealed, or to entitle plaintiffs to any relief, yet, when we take into consideration all the facts and circumstances surrounding these various transactions as one complete and composite whole, I believe they do.

334 Considering the fact that at the time of executing the deed and agreement of May 12, 1892, Lawler and Wells had actual knowledge and notice that Warner's intentions were to incorporate a company and to use the language of one of the defendants themselves "work it for all there was in it," the failure to record this agreement so that those dealing with Cowland and Warner and their associates should have constructive, if not actual notice of its existance, and the rights claimed by defendants thereunder; the delivery of possession to Warner, or his agents, and through him, or them, to the Industrial Company, and to the gold company, and the circumstances and conditions under which they took and retained the open, notorious and exclusive possession of the property, working, operating and dealing with them and holding themselves out to the world and to those who did deal with them, that they were the owners of said property; the notice and knowledge which they must have had long before any of this stock was sold, that Warner, whatever his original intentions were, did not intend, or was not able to pay the purchase price himself, but expected to raise it all or at least the greater part of it, by the sale of the stock of this company; their participation, to some extent at least, in the preparation of this prospectus, and the knowledge which they had, or would have had, had they not closed their eyes and ears, as to its contents, these and all of them are elements as it

seems to me, which go to make up this complete and com-
335 posite whole.

For, while I do not give — some weight and effect to this prospectus that counsel for plaintiffs do, so far as it charges these defendants, it is one of the elements which go to make up this constructive fraud, and though the testimony is somewhat conflicting, I think the reasonable deduction from it is, that Lawler and Wells knew of its preparation and circulation.

Furthermore, these various extensions of the time for the payment under the original agreement, one of which, to wit: the first, was made before a share of this stock had been issued, and which, if it had not been made, would have rendered impossible the unfortunate condition out of which this litigation has arisen. But, by far the most important consideration and the one which, as it seems to me, if controlling in this case, the acceptance and retention by them of large sums of money which from the very nature came through the sale of this stock. Add to this their conduct prior and subsequent to May 12th, 1893, when the extension was made, the circumstances under which it was made, Lawler's election as manager at his and Wells' suggestion, the receipt and retention by them of fifty thousand dollars of full-paid stock of this corporation, and the receipt and retention by them of large sums of money after receiving that stock, and after Lawler had been made manager and had accepted the management of this company, all of these things after they were fully advised of all of the
336 facts and circumstances which had gone before, seem to me — almost if not quite, amount to a waiver of their rights in the future, if not a ratification of all that had been done in the past. There are still other considerations of more or less importance which it is unnecessary here to enumerate, which, together with the above, clearly justify me in holding that whatever the relation of these defendants were to the plaintiffs in the inception, they did finally become, by reason of their course of conduct, and the benefits which they knowingly received throughout the sale of this stock, charged with a duty imposed upon them by law and which, as I have already said they cannot take on or put off at will, which estops them from taking any undue or unconscionable advantage of the unfortunate conditions *to* which the plaintiffs, through no fault of their own, have been placed. And makes whatever rights they may have in the property which is the subject of this action subordinate to the rights of these plaintiffs.

The difficulties of doing exact and equal justice to all parties to a controversy like this, are inherent in the controversy itself; and must be readily apparent to any one at all familiar with the facts and circumstances surrounding this one. And the most that a court of equity, with its broad and comprehensive system of administering justice can hope to do in such a case is to put the parties as near as possible in the same relative position that they would have
337 been had their original intentions and expectations been fulfilled. Having regard for that rule of equity which I have already quoted, which requires that as between two parties equally

innocent, the burden be cast upon the one who has caused the other to be misled.

From the foregoing principles of law, applied to the facts found, the decree to be entered follows as a logical sequence: but as I have already indicated, the only decree that can be entered at this time, will be interlocutory in its nature; and this court espressly reserves to itself jurisdiction of the parties and the subject-matter of the action to abide the result of a final decree to be hereinafter entered.

Upon the findings of fact and conclusions of law, hereinbefore found, it is hereby decreed:

*Decree.*

First. It is ordered adjudged and decreed that the first plea of defendants Lawler and Wells be and the same is hereby dismissed.

Second. It is ordered, adjudged and decreed that the demurrer of said defendants be and the same is hereby overruled.

338 Third. It is ordered, adjudged and decreed that the motion of said defendants for judgment upon the cross-bill and answer thereto be and the same is hereby denied.

Fourth. It is further ordered, adjudged and decreed that said Lawler and Wells, nor either of them, have any right, title or interest in and to any of the mines or mining properties described in the complaint herein, or any lien upon, or equity in the same, except as it is subject and subordinate to the rights and equities of each and every stockholder of the Seven Stars Gold Mining Company, who is a *bona fide* holder of stock subscribed and paid for in good faith without knowledge or notice of the fraudulent acts and transactions of said Warner and his associates who managed and controlled the defendant corporation.

Fifth. It is further ordered, adjudged and decreed that an accounting be had before a referee or master in chancery to be hereinafter appointed by order of the court, of all moneys paid to and received by said Lawler and Wells for and on account of this property since the 12th day of May, 1892, whether the same were received from said Warner, from said Industrial Mining and Guaranty Company, and said Seven Stars Gold Mining Company,

339 together with all moneys received by said defendants from ore and bullion receipts since said 12th day of May, 1892, whether the same was received prior or since, the first day of September, A. D. 1893, together with an account showing the expenditures by said Lawler and Wells for and on account of said properties, or any thereof, since they assumed possession thereof in September, A. D. 1893; said referee or master shall also ascertain and report to the court the number of shares of stock in the Seven Stars Gold Mining Company which were subscribed for, the times when, and for what consideration the same were issued; and that said master make a full and complete report as to his doings in that regard; said report to be made and filed on or before the first day of January, A. D. 1898, unless the time is further extended by order of the court.

Sixth. It is further ordered, adjudged and decreed that pending a final decree, a receiver be appointed to take and hold said property described in the bill herein and all thereof, with all the rights, privileges and appurtenances thereunto belonging; and that an order be entered herein naming such receiver, and fixing the amount of his bond, and upon the entry of such order and the approval and filing of the bond of such receiver, said Lawler and Wells shall forthwith deliver to such receiver all of the mines mining properties and other property described in the bill herein, such receiver
340 to take and hold said properties with all the powers of a receiver in equity, to abide the further order, or the final decree in this case; with leave to said receiver to apply to this court from time to time for authority or direction in regard to the care and control of said property; and it is expressly provided that said receiver shall incur no expense other than such as is reasonably necessary for the care and preservation of the said property except upon leave first had of the court and upon notice of the application therefor to the respective parties or their counsel.

Leave is hereby granted to either party to make application to the court to amend or modify this decree, notice being first given to the opposite parties or their counsel.

Dated this 30th day of September, A. D. 1897.

By the court:

(Signed) HIRAM C. TRUESDALE, *Judge.*

341 And it further appearing to the court that together with the said decree, and on the same day, the said court entered an order in this cause directing a reference to a master in chancery, and therein directed the said master to ascertain and report to the court the following, to wit:

First. Showing all moneys received by or paid to said Lawler and Wells for and on account of said property and properties since the 12th day of May, 1892, whether the same was received from H. H. Warner, the Industrial & Mining Guaranty Company, or the Seven Stars Gold Mining Company.

Second. All moneys paid for or used in or about the operation of said mines and for the purchase of machinery, supplies of any kind or nature whatsoever from May 12th, 1892, to September 10th, 1893, and from said last date to the date of the entry of this order.

Third. The amount derived from the sale of bullion and ore during the same period last aforesaid and paid over to Lawler and Wells.

Fourth. The amount of machinery purchased after May 12th, 1892, and attached and sold under attachment for the payment thereof.

Fifth. To ascertain from the books of the Industrial & Mining Guaranty Company and from the Seven Stars Gold Mining Company, now in evidence in this case, the number of shares of stock in the Seven Stars Gold Mining Company which was subscribed
342 for, the several dates of said subscriptions, the persons severally subscribing therefor and the consideration paid for the same.

And it further appearing to the court that pursuant to the said order of reference, the said master has made and filed in this court his report, in which it is shown:

First. That the defendants Lawler and Wells received on account of said property and properties from H. H. Warner $51,000.00.

Second. That the defendant- Lawler and Wells received from the Industrial & Mining Guaranty Company on account of said property and properties the sum of $112,339.96.

Third. That there was paid for operating the said mines and for the purchase of machinery therefor, between May 12th, 1892, and September 10th, 1893, the sum of $130,223.85 and from September 10th, 1893, to the date of the entry of the order of reference the sum of $35,658.93.

Fourth. The amount derived from the sale of bullion and ore and paid over to Lawler and Wells between May 12th, 1892, and September 10th, 1893, was $67,799.86.

Fifth. Five thousand dollars of machinery was purchased after May 12th, 1892, and sold under attachment for a debt due by the Seven Stars Gold Mining Company, to Bashford, Burmister & Company.

343 Sixth. That stock of the Seven Stars Gold Mining Company was sold to various parties and cash received therefor in the sum and amount of $254,892.77; that the sum of $129,275.72 was received from the American subscribers to the guaranteed stock; that the sum of $2583.80 was received from the American subscribers to the regular stock; that $123,852.33 was received on account of London subscriptions for Seven Stars stock.

And it further appearing to the court that the defendants Lawler and Wells appeared before the said master and made and filed certain objections to the said report, which objections were overruled by said master; and thereupon the said defendants by their counsel filed their exceptions to the said report and to the action of the master in overruling their objections thereto; and this cause now coming on to be heard upon the said report of the said master and the exceptions filed thereto and upon the motion and application of the plaintiffs for a further decree in this cause and to carry into effect the said former decree herein, and the court being now fully advised in the premises, and counsel for the respective parties having been heard, the court doth find, order, adjudge and decree:

I.

That the report of the master in chancery, Hon. Charles P. Hicks, be and the same is hereby approved and confirmed, and all exceptions filed thereto are hereby overruled.

344 II.

That, as appears from the report of the said master, the stockholders of the Seven Stars Gold Mining Company, plaintiffs herein, purchased and paid cash for stock of the said company in the sum and amount of $254,892.77; that W. R. Kennard, who was asso-

ciated with H. H. Warner in the management and control of the defendant corporations, paid forty-seven (47) dollars of said amount.

III.

That in accordance with the said former decree herein giving the *bona fide* stockholders of the said Seven Stars Gold Mining Company, plaintiffs herein, a prior and superior interest and equity in the said mines and mining property, it is hereby adjudged and decreed that the persons, severally purchasing stock in the Seven Stars Gold Mining Company and paying for the same in cash, save and excepting the said W. R. Kennard, which stockholders are plaintiffs herein, by presence on the record and by representations, have a lien upon the said mines and mining property prior and superior to any right, title, interest or equity in or to said property, properties or appurtenances of said defendants, John Lawler, Ed. W. Wells, Industrial & Mining Guaranty Company, Seven Stars Gold Mining Company, and John Griffin, receiver, of the Industrial & Mining Guaranty Company and of the Seven Stars Gold Mining Company, for
345 the amount and in the sum of one hundred and eighty thousand, one hundred and thirty-nine dollars and eighty-two cents ($180,139.82)

That the mining property, properties and appurtenances hereby made and decreed subject and answerable of the said lien of the said plaintiffs, are particularly described as follows, to wit:

All and singular the following-described mining claims, locations and mines, and mining property, situate, lying and being in the Eureka mining district, in the county of Yavapai, and Territory of Arizona, viz:

The "Hillside," the location notice whereof is recorded in Book of Mines, No. 23, at page 554, the records of Yavapai county, Territory of Arizona;

The "Seven Stars," the location notice whereof is recorded in Book of Mines, No. 23, at page 553, of the records of Yavapai county, Territory of Arizona;

The "Happy Jack," the location notice whereof is recorded in Book of Mines No. 23, at page 549, of the records of Yavapai county, Territory of Arizona;

"Contact No. 1," the location notice whereof is recorded in Book of Mines, No. 24, at page 150, of the records of Yavapai county, Territory of Arizona;

"Contact No. 2," the location notice whereof was recorded in Book of Mines No. 24, at page 151, of the records of Yavapai county, Territory of Arizona;

346 "Camp," the location notice whereof is recorded in Book of Mines No. 24, at page 152, of the records of Yavapai county, Territory of Arizona;

The location "Midnight" located January 1st, 1892, a record of which location is made in Book of Mines, No. 33, at page 232, of the records of Yavapai county, Territory of Arizona;

The "Mesa," the location notice whereof is recorded in Book of

Mines, No. 34, at page 298, of the records of Yavapai county, Territory of Arizona;

The "Elwood," the location notice whereof is recorded in Book of Mines, No. 34, at page 426, of the records of Yavapai county, Territory of Arizona;

The "Boulder," the location notice whereof is recorded in Book of Mines No. 28, at page 494, of the records of Yavapai county, Territory of Arizona;

The "Mescal," the location notice of which is recorded in Book of Mines, No. 34, at page 481, of the records of Yavapai county, Territory of Arizona;

The "Waterfall," the location notice of which is recorded in Book of Mines, No. 33, at page 233, of the records of Yavapai county, Territory of Arizona.

The records of Yavapai county, Territory of Arizona, showing location notices of said mines and mining properties and giv-
347 ing a more accurate description thereof, are made a part of this decree with the same force and effect as, if herein written.

Also all that certain stamp mill and stamp mills, situate upon the said mining property and adjacent to the said "Hillside," and "Seven Stars," mining claims, and belonging to said property, and erected for the purpose of reducing ores from the said claims; and also all of the machinery, appliances, equipments, appurtenances, around, about and in any way connected with the said mill, or mills, completing the same and used in the operation thereof; also all mining, milling and blacksmith tools, implements, appliances, and supplies, in, about and around and pertaining to the said "Hillside" mining camp and works; all provisions, goods, wares, and merchandise, houses, shops, stores, buildings, water, water rights, easements, rights of way, roads, fences and improvements upon the mesa land in use for pasture, kitchen and household furniture belonging to the said mines, and in and around the said mining camp and conveyed property; also all freight wagons, team wagons, and all horses, mules and burros belonging to the said property and used therewith, and all harnesses belonging — and completing the same teams.

Also all the sawed, hewn, shaven and split timber and lumber, at and around the said mining camp, and the camp wood saw-mill, camp and vicinity and the frame or board houses at said
348 camp, belonging to and attached to said property, one pair of scales at Garland station, on the P. & A. C. R. R., and all ores and minerals of every kind and character, now upon the dump of said mining claims, concentrates and tailings at said camp and premises.

Together with all and singular the tenements, hereditaments and appurtenances, dips, spurs, angles, rock, ores and earth, mineral and minerals, timber and water and all other goods and chattels, attached to and belonging to or in anywise appertaining to the said mines and mining property, at the date of this decree.

IV.

That the said lien for $180,139.82 is decreed in the aggregate in the interest of the plaintiffs herein, the several persons who made the individual payments constituting the said sum of $254,892.77 excepting said Kennard, ratably, and in proportion to the sum paid by each of them upon the subscriptions for the Seven Stars stock, and the court here and now expressly reserves jurisdiction over this decree for the purpose of distributing the proceeds of the said lien and making all property and necessary orders with respect to such distribution.

V.

And it is hereby ordered, adjudged and decreed that the said plaintiffs are entitled to a foreclosure of their said lien, and
349 that unless the said defendants, or any of them, shall pay, or cause to be paid, into this court, to the credit of this cause, and in payment of said lien, the said sum of $180,139.82, with interest thereon at the rate of seven per cent. per annum from and after the date of the entry of this decree, within sixty (60) days from and after the entry of this decree herein, then it is ordered and decreed that the said mines and mining property, properties and appurtenances, above described, or so much thereof as is necessary shall be sold for the purpose of satisfying the said lien, in the manner following:

(1.) J. M. W. Moore is appointed special commissioner to direct and conduct the said sale.

(2.) The said sale shall as to advertisement, time, place, and mode and manner, and with respect to redemption therefrom, be governed and controlled by the statutes of the Territory of Arizona, relating to sales under judgment and decrees and executions and the practice of this court.

VI.

It is further ordered, adjudged and decreed that in the event of a sale of the said mining property and properties for the satisfaction of the said lien, then the proceeds of the said sale shall be paid by said commissioner into this court to the credit of said cause, to be distributed by the court among the persons entitled thereto, in accordance with this decree.

350 VII.

This decree shall not be construed as adjudging a personal judgment against the said Lawler and Wells, or either of them, for the amount of said lien, or any part thereof, or for any deficiency or balance that may remain due thereon after the application of the proceeds of the sale of said property, but that the said lien *that* be a charge solely and alone against the said mines and mining property above described.

VIII.

It is ordered and decreed that the amount of the lien in this decree shall bear interest at the rate of seven per centum per annum from and after the entry hereof.

IX.

This decree shall not be released or satisfied except in open court, and upon reasonable notice in writing to the counsel of plaintiffs, now appearing in this cause; provided, however, that upon payment of the amount herein decreed with interest to the clerk of this court, this decree may be satisfied of record in the usual manner.

X.

That the plaintiffs herein shall have and recover from and of the said defendants, John Lawler and Ed. W. Wells, all legal costs expended and incurred by them in the prosecution of this suit, and shall have execution therefor.

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XI.

It is further ordered that John Lawler, Ed. W. Wells, Industrial & Mining Guaranty Company, Seven Stars Gold Mining Company, and John Griffin, receiver, be and each of them is, hereby enjoined and restrained from taking or carrying away or in anywise interfering with any of the ore, cordwood, concentrates, timber, lumber, tools, machinery, stores or buildings, or other property and appurtenances, now upon the said mining property and premises, pending the execution and enforcement of this decree.

Done in open court this 12th day of July A. D. 1898.

WEBSTER STREET, *Judge*.

(Endorsed:) 2365. District court, fourth judicial district. C. B. Wiser, *et al. vs.* John Lawler, *et al.* Entered J. Book No. 6, page 266 *et seq.* Docket No. 2, p. — Final decree. Filed at 3 o'clock p. m. Jul- 12, 1898, J. M. Watts, clerk.

352 In the District Court of Yavapai County, Arizona.

CLINTON B. WISER ET AL., Plaintiffs,
*vs.*
JOHN LAWLER ET AL., Defendants.
} Motion for a New Trial.

Come now the defendants, John Lawler and Ed. W. Wells, and move the court for an order granting a new trial herein for the following reasons:

1. That the court erred in denying the prayer set forth in the first ground of defense contained in their answer to the amended complaint.

2. That the court erred in overruling the defense contained in the second ground of defense in said answer.

3. That the court erred in denying the motion of said defense for judgment upon the cross-bill and answer thereto.

4. That the court erred in refusing to submit to a jury the special interrogatories submitted by these defendants.

5. That the court erred in refusing to submit to the jury the issue of fact as to whether or not there was any fraud on the part of these defendants.

6. That the court erred in the trial of said cause in this:

In overruling the objection to introduction of any testimony in support of allegations of the complaint. (Reporter's Notes, page 6.)

353 7. In permitting the plaintiffs to read in evidence the answer of Warner to interrogatory 7 of his deposition. (Rep. Not. 7)

8. In permitting plaintiffs to read the answer of Warner to inter. 8 of his deposition.

9. In permitting the plaintiffs to read in evidence the answer of witness Warner to inter. 11. (Rep. Not. 8)

10. In permitting the plaintiffs to read in evidence the articles of incorporation of the Seven Stars Gold Mining Company, marked "Plaintiffs' Exhibit 1." (Rep. Not. 9)

11. In permitting the plaintiffs to read in evidence the answer of witness Warner to inter. 13. (Rep. Not. 10)

12. In permitting plaintiffs to read in evidence the answer of witness Warner to inter. 15 of his deposition.

13. In permitting the plaintiffs to read in evidence the answer of witness Warner to inter. 18. (Rep. Not. 11)

14. In permitting the plaintiffs to read in evidence the charter of the Industrial and Mining Guaranty Company, marked "Plaintiffs' Exhibit No. 3."

15. In permitting the plaintiffs to read in evidence the answer of witness Warner to inter. 19 of his deposition. (Rep. Not. 12)

16. In permitting plaintiffs to read in evidence the answer of witness Warner to inter. 20 of his deposition. (Rep. Not. 13)

354 17. In permitting plaintiffs to read in evidence "Exhibit G" attached to Warner's deposition.

18. In permitting plaintiffs to read their Exhibits 5, 6, 7, and 8. (Rep. Not. 14)

19. In permitting plaintiffs to read the answer of witness Warner to inter. 21. (Rep. Not. 15)

20. In permitting plaintiffs to read in evidence the answer of witness Warner to inter. 22.

21. In refusing the motion of these defendants to strike out the words "Lawler was fully conversant," appearing in witness Warner's answer to inter. 22.

22. In permitting the plaintiffs to read in evidence the answer of witness Warner to inter. 23.

23. In permitting the plaintiffs to read in evidence the answer of witness Warner to inter. 24. (Rep. Not. 16)

24. In permitting the plaintiffs to read in evidence the answer of witness Warner to inter. 25 of his deposition.

25. In refusing the motion of these defendants to strike out the

answer of witness Warner to inter. 25 of his deposition. (Rep. Not. 17)

26. In permitting plaintiffs to read in evidence the answer of witness Warner to inter. 26 of his deposition. (Rep. Not. 17)

27. In permitting the plaintiffs to read in evidence the answer of witness Warner to inter. 29 of his deposition.

355 28. In permitting plaintiffs to read in evidence the answer of witness Warner to inter. 30.

29. In refusing the motion of these defendants to strike out the answer of witness Warner to inter. 30. (Rep. Not. 18.)

30. In refusing the motion of these defendants to strike out answer of witness Warner to inter. 34 of his deposition.

31. In refusing the motion of these defendants to strike out a portion of the answer of witness Warner to inter. 35.

32. In refusing the motion of these defendants to strike out the answer of witness Warner to inter. 40 of his deposition. (Rep. Not. 19.)

33. In refusing the motion of these defendants to strike out the statement of Warner to the effect that he considered absolute title vested in the Seven Stars Company, contained in the answer of witness Warner to inter. 41 of his deposition.

34. In refusing the motion of these defendants to strike out the letters J, K, and L mentioned in answer to inter. 43 of Warner's deposition and attached thereto.

35. In refusing the motion of these defendants to strike out the answer of witness Warner to inter. 44 of his deposition. (Rep. Not. 19.)

356 36. In refusing the motion of these defendants to strike out the answer of witness Warner to inter. 46. (Rep. Not. 20.)

37. In refusing to strike out the answer of witness Warner to inter. 50 of his deposition.

38. In refusing to strike out the answer of witness Warner to inter. 53 of his deposition.

39. In refusing motion of these defendants to strike out the answer of witness Warner to inter. 57 of his deposition.

40. In refusing to strike out the answer of witness Warner to inter. 64 of his deposition.

41. In overruling the objection of these defendants to the answer of witness Warner to cross-interrogatory 9.

42. In refusing to strike out the answer of witness Warner to cross-interrogatory 12.

43. In permitting the plaintiffs to read in evidence the answer of witness Kennard to the 11th inter. of his deposition.

44. In permitting the plaintiffs to read in evidence the answer of witness Kennard, to the 17th inter. of his deposition.

45. In permitting the plaintiffs to read in evidence the answer of witness Kennard, to the 19th inter. of his deposition.

357 46. In permitting the plaintiffs to read in evidence the answer of witness Kennard to the 23d inter. of his deposition.

48. In permitting the plaintiffs to read in evidence the answer of witness Kennard to the 24th inter. of his deposition.

49. In permitting the plaintiffs to read in evidence the answer of witness Kennard to the 26th inter. of his deposition.

50. In permitting the plaintiffs to read in evidence the answer of witness Kennard to the 28th inter. of his deposition.

51. In permitting the plaintiffs to read in evidence the answer of witness Kennard to the 30th inter. of his deposition.

52. In permitting plaintiffs to read in evidence, the answer of witness Kennard to the 31st inter. of his deposition.

53. In permitting plaintiffs to read in evidence the answer of witness Kennard to the 33d inter. of his deposition.

54. In permitting the plaintiffs to read in evidence the answer of witness Kennard to the 36th inter. of his deposition.

55. In permitting the plaintiffs to read in evidence, the answer of witness Kennard to the 48th inter. of his deposition.

358 56. In permitting the plaintiffs to read in evidence the answer of witness Kennard to the 34th inter. of his deposition.

57. In permitting the plaintiffs to read the deposition of witness Kennard.

58. In permitting the plaintiffs to read in evidence the deposition of Harold J. Footner.

59. In permitting the plaintiffs to read in evidence the deposition of William M. Earl.

60. In permitting the plaintiffs to read in evidence the deposition of James B. Herbert.

61. In permitting the plaintiffs to read in evidence the deposition of Robert S. Hudspeth.

62. In permitting the plaintiffs to read in evidence the deposition of Lawrence F. Wilson.

63. In permitting the plaintiffs to read in evidence the deposition of Peter J. Carey.

64. In permitting the plaintiffs to read in evidence the deposition of E. C. Stebbins.

65. In permitting the plaintiffs to read in evidence the deposition of J. E. Hedges.

66. In permitting the plaintiffs to read in evidence the appointment as receiver, of John Griffin. (Rep. Not. 26.)

67. In permitting the plaintiffs to read in evidence the stock ledger, No. 1 of the Seven Stars Gold Mining Company. (Rep. Not. 26.)

359 68. In permitting the plaintiffs to read in evidence the minute books of the Seven Stars Gold Mining Company (Rep. Not. 27), being Book 2 attached to the receiver's deposition.

69. In permitting plaintiffs to read in evidence Book No. 3 marked "Exhibit No. 6" of Griffin's deposition.

70. In permitting plaintiffs to read in evidence one blank share of stock numbered 569, appearing in stock book marked "Exhibit 8" in Griffin's deposition.

71. In permitting the plaintiffs to read in evidence one share of certificate of stock in Book No. 4, being "Exhibit No. 7" attached to John Griffin's deposition.

72. In permitting plaintiffs to read in evidence one blank certifi-

cate of common stock No. 874, appearing in the blank stock book referred to in Griffin's deposition.

73. In permitting plaintiffs to read in evidence Book No. 6 letters, invoice file book containing smelters' reports, being "Exhibit No. 9" referred to in Griffin's deposition.

74. In permitting the letter-press book of the Seven Stars Mining Company being "Exhibit No. 9½" referred to in Griffin's deposition.

75. In permitting plaintiffs to read in evidence, the cash book, journal and ledger of the Industrial Mining and Guaranty Company.

360 76. In permitting the plaintiffs to read in evidence letters 79 to 84 of Letter Book H H, numbered 79 to 84 inclusive, referred to in Griffin's deposition.

77. In permitting the plaintiffs to read in evidence the letters of Wells to Griffin, dated September 14, 1893, and April 4, 1894, and September 21, 1893, from Griffin to Wells.

78. In permitting plaintiffs to read in evidence the deposition of T. A. Rickard.

79. In permitting the plaintiffs to introduce evidence tending to show that certain stockholders had purchased stock in the Seven Stars Gold Mining Company, when they did not know these defendants and had no knowledge or information concerning anything they had done, and did not rely upon any act or commission or omission of these defendants or either of them.

80. In permitting plaintiffs to read in evidence the deposition of J. J. Miller.

81. In permitting plaintiffs to read in evidence the deposition of J. A. Kerr.

82. In permitting plaintiffs to read in evidence the deposition of M. J. Reardon.

83. In permitting plaintiffs to read in evidence the deposition of L. F. Hiornes.

84. In permitting plaintiffs to read in evidence the deposition of Edgar G. Miller.

85. In permitting plaintiffs to read in evidence the deposition of E. M. Smith.

361 86. In permitting the plaintiffs to read in evidence the deposition of L. H. Meyer.

87. In permitting plaintiffs to read in evidence the deposition of H. J. McMahon.

88. In permitting the plaintiffs to read in evidence the deposition of William Schaeffer.

89. In permitting plaintiffs to read in evidence the deposition of L. M. Crouch.

90. In permitting plaintiffs to read in evidence the deposition of James Vandeveer.

91. In permitting plaintiffs to read in evidence the deposition of R. M. Verden.

92. In permitting plaintiffs to read in evidence the deposition of W. H. Baley.

93. In permitting plaintiffs to read in evidence the deposition of S. B. Wray.

94. In permitting plaintiffs to read in evidence the deposition of Mary Anna Heath.

95. In permitting plaintiffs to read in evidence the deposition of Cecil Quintin.

96. In permitting plaintiffs to read in evidence the prospectus known as the American prospectus, map and blank application sent with prospectus and map, mentioned in the complaint. (Rep. Not. 31)

97. In permitting the plaintiffs to read in evidence a copy
362 of what is known as the English prospectus, attached to Cecil Quintin's deposition.

98. In permitting plaintiffs to read in evidence a receipt for payment of the first installment of allotment of stock, attached to the deposition of John A. Kerr. (Rep. Not. 33)

99. In admitting the testimony of Warner Miller. (Rep. Not. 35)

100. In refusing the motion of these defendants to strike out the testimony of Warner Miller.

101. In permitting plaintiffs to prove by witness Warner Miller, the proceedings at the alleged stockholders' meeting, and what the receiver said at that meeting.

102. In permitting plaintiffs to prove by witness Warner Miller, a demand upon the receiver to bring a suit on behalf of the corporation concerning the matter alleged in the complaint. (Rep. Not. 47)

103. In refusing to permit defendants to cross-examine witness Warner Miller as to his business connections with H. H. Warner. (Rep. Not. 54.)

104. In permitting plaintiffs to read in evidence, Plaintiffs' Exhibit "A–1," being a letter from John Lawler to H. H. Warner, dated May 22, 1893. (Rep. Not. 57.)

105. In permitting plaintiffs to read in evidence, Exhibit "A–2" signed by Lawler and Wells, dated Feb. 16, 1893.

106. In permitting plaintiffs to read in evidence a letter to
363 the Bank of Arizona, dated Dec. 27, 1893, and marked Exhibit "A–3."

107. In permitting the plaintiffs to read in evidence, a deed from Charles Cowland to the Industrial Mining & Guaranty Company, dated June 15, 1892, being Exhibit "18," attached to John Griffin's deposition.

108. In permitting plaintiffs to read in evidence, Exhibit No. 20, attached to John Griffin's deposition, being a proposition from H. H. Warner to the Seven Stars Gold Mining Company.

109. In permitting plaintiffs to read in evidence a communication dated June 15, 1892, from Charles Cowland to John Lawler and Ed. W. Wells, being Exhibit No. "20," attached to John Griffin's deposition.

110. In permitting plaintiffs to read in evidence a letter from Ed. W. Wells to H. H. Warner, dated May 16, 1893, being Exhibit No. 23, attached to the deposition of John Griffin.

111. In permitting plaintiffs to read in evidence an unsigned memoranda marked Exhibit "26," attached to Griffin's deposition.

112. In permitting plaintiffs to read in evidence a letter dated Feb'y 14, 1893, from Forbes Rickard to the guaranty company, marked Exhibit No. 27, attached to Griffin's deposition.

364 113. In permitting defendants to read in evidence an agreement between Cowland and the guaranty company, being Exhibit No. 29 attached to John Griffin's deposition.

114. In permitting plaintiffs to read in evidence a letter from John Lawler to H. H. Warner, being Exhibit "30" attached to John Griffin's deposition.

115. In permitting plaintiffs to read in evidence a letter from Hazeltine, cashier, to Earl, treasurer, dated Oct. 11, 1892.

116. In permitting plaintiffs to read in evidence, a letter from William Earl to Hazeltine, cashier, being Exhibit "32," attached to the deposition of John Griffin.

117. In permitting plaintiffs to read in evidence, Exhibits "31" to "71½," and each of them, attached to John Griffin's deposition.

118. In permitting the witness Armitage to testify in matters connected with the American prospectus. (Rep. Not. 68.)

119. In permitting plaintiffs to read in evidence, a letter from defendant Wells to Charles Cowland, dated March 12, 1894, marked "Plaintiffs' Exhibit A–7."

120. In permitting plaintiffs to read in evidence a letter from Kennard to Lawler, dated July 17, 1893, marked "Plaintiffs' Exhibit A–8."

121. In permitting the plaintiffs to read in evidence a telegram from Warner to Lawler, marked "Plaintiffs' Exhibit A–9," dated 9, 24/92.

365 122. In permitting the plaintiffs to introduce letters from Mr. Warner to Mr. Lawler, dated May 25, 1893, and marked "Plaintiffs' Exhibit A 10."

123. In permitting plaintiffs to read in evidence the telegrams marked from A–11 to A–16 inclusive. (Rep. Not. 75.)

124. In permitting witness Wiser to testify to the number of shares he held in the Seven Stars Company. (Rep. Not. 91)

125. In permitting the witness Wiser to testify when he first saw the prospectus of the Seven Stars Company. (Rep. Not. 93)

126. In permitting witness Wiser to testify as to his construction of the American prospectus. (Rep. Not. 94)

127. In permitting the witness Wiser to testify when he first discovered that the title to the mining property was not in the Seven Stars Company. (Rep. Not. 97)

128. In permitting the plaintiffs to prove by witness Wiser that there were other stockholders beside himself. (Rep. Not. 98)

129. In permitting witness Wiser to testify as to what occurred at alleged stockholders' meeting. (Rep. Not. 101)

130. In permitting witness Wiser to testify that he made a personal demand upon the receiver to bring this suit. (Rep. Not. 102)

131. In permitting the deposition of John Griffin to be read. (Rep. Not. 103)

366 132. In refusing to permit the defendants to cross-examine Wiser as to what stock was used in paying for Atwood lands. (Rep. Not. 104)

133. In refusing to permit witness Wiser to answer question to wit: "Did you or not, enter into negotiations for Warner by which you were to pay for some land in or near the city of Chicago 13,200 shares or thereabouts, in the Seven Stars stock and two fifteen-thousand-dollar notes of Warner?"

134. In permitting the plaintiffs to introduce in evidence, the telegram and correspondence between the Industrial and Mining Guaranty Company and its officers with the Bank of Arizona and its officers.

135. In permitting the plaintiffs to introduce the correspondence between the Denver sampling works and the Bank of Arizona and its officers.

136. In permitting the plaintiffs to introduce correspondence between the Seven Stars Gold Mining Company and its officers with the Bank of Arizona and its officers.

137. In permitting the telegram from John Lawler to H. H. Warner, dated 8-29, '92, being Exhibit 12 attached to Griffin's deposition, to be read.

138. In permitting plaintiffs to read in evidence a telegram from Lawler to Warner, Exhibit 13 attached to Griffin's deposition.

139. In permitting the plaintiffs to read in evidence, the
367 contract of Charles Cowland conveying his interest to the Industrial Mining & Guaranty Company, being Exhibit No. 17 referred to in Griffin's deposition.

140. In permitting the plaintiffs to introduce evidence tending to show the amount of money that was paid into the Bank of Arizona to the credit of Lawler and Wells on account of the purchase-money mentioned in the Cowland contract.

141. In permitting the plaintiffs to introduce evidence as to the aggregate amount of the gross proceeds of ores and bullion from the Hillside mine, placed to the credit of Lawler and Wells in the Bank of Arizona.

141*a*. The findings of the court are insufficient, contrary to the evidence and do not sustain the interlocutory decree in this:

(*a*.) It cannot be ascertained from the findings whether or not the guaranty company took and received its deed from Charles Cowland with full knowledge and notice of the terms, conditions and license contained in the escrow agreement of May 12, 1892.

(*b*.) It cannot be ascertained therefrom whether the Seven Stars Company took and received its contract from H. H. Warner, marked Exhibit 19, attached to Griffin's deposition, with full knowledge and notice of the terms, conditions and license contained in the Cowland contract or escrow agreement, dated May 12, 1892.

368 (*c*.) It cannot be ascertained whether or not the guaranty company or the Seven Stars Company entered into the possession of said mining properties under and by virtue of the license contained in said Cowland contract or otherwise.

(*d*.) It cannot be ascertained therefrom whether or not Lawler and Wells were promoters of or interested in the organization of the Industrial Mining and Guaranty Company or the Seven Stars Company.

(*e.*) It cannot be ascertained therefrom whether Lawler and Wells were associates of Warner as mentioned in the 7th finding.

142. The court erred in its findings in this to wit:—

(*a.*) That as to the finding marked "first" the finding that negotiations were entered into, and an examination of the property was made, is immaterial.

(*b.*) That as to the finding marked "second," the court erred in finding that Warner guaranteed any payments to Lawler and Wells.

(*c.*) That as to the finding marked "third" the same is contrary to law, in this, that the said escrow agreement and deposit of deed in the Bank of Arizona, vested no estate or title in said Cowland or Warner and no estate or title could be vested in them or either of them or their assigns until the full purchase price had been paid, according to the terms of the agreement.

369 (*d.*) It is immaterial to the issues in this case what the intentions or expectations of Mr. Warner were, or the knowledge thereof of Lawler and Wells.

(*e.*) That said finding is contrary to the evidence, in this; that there was no delivery of said escrow agreement to Cowland or Warner or either of them, but said deed and agreement was deposited in the Bank of Arizona as the escrow holder thereof, under the terms and conditions of that part of the contract relating to purchase-money.

(*f.*) That there is no evidence tending to show that Lawler and Wells at the time of signing said agreement, knew that said Cowland or Warner were going to do or perform any act that would tend to defraud or deceive any person, as to the sale of stock.

(*g.*) That said finding is contrary to the evidence in this, that there is no evidence tending to show that Lawler and Wells knew that Cowland and Warner were going to put stock on the market for the purpose of raising the purchase price of said property.

(*h.*) That as to the finding marked "fourth" the same is indefinite and uncertain in not finding the character of the possession delivered or that such possession was delivered solely under the license contained in the Cowland contract of May 12, 1892.

(*i.*) That as to the finding marked "fifth" the finding that
370 money was paid by Warner to Lawler and Wells is immaterial.

(*j.*) That the finding that all subsequent payments were made in the manner and for the purpose hereinafter named, is not sustained by the evidence for the reason that the court excluded all evidence upon that question.

(*k.*) That as to the finding marked "sixth" the finding that the Industrial Mining & Guaranty Company was incorporated, is immaterial. The evidence thoroughly shows that said guaranty company took said deed with full knowledge and notice of the Cowland contract and of the legal title being vested in Lawler and Wells, and there is no finding upon that question.

(*l.*) The evidence does show that Cowland took and received from the guaranty company a contract that that corporation would fully

comply with the provisions of the Cowland contract and there is no finding upon that question.

(*m.*) That the evidence shows that the guaranty company went into the possession of the mines in controversy under the license contained in the Cowland contract and in no other manner, and there is no finding upon that question.

(*n.*) That the evidence shows that said mines are situate in Yavapai county, Arizona Territory, and that the legal title to said mines on May 12, 1892, was vested in Lawler and Wells and the muniments of title thereof were recorded in the office of the county recorder of Yavapai county, Arizona Territory, and said legal
371 title has ever since continuously hitherto been vested in Lawler and Wells and of record as aforesaid, and there is no finding on that question.

(*o.*) That the finding that the guaranty company went into the open notorious and exclusive possession thereof, is contrary to the law and the evidence in this, that they were in possession solely under the Cowland license, and there is no finding as to the character of that possession.

(*p.*) That the finding of the court to the effect that the guaranty company entered into an arrangement with the Seven Stars Company, whereby the former agreed to convey the aforesaid mines and mining properties to the Seven Stars Company, free of all charges and clear of all incumbrance, upon certain conditions, is contrary to the evidence in this: whatever contract or arrangement was entered into, was never carried out and there is no evidence tending to show that either of said companies ever ratified or confirmed such arrangement.

(*q.*) That the evidence does not show that H. H. Warner was president of both companies, and that the Seven Stars Company authorized the guaranty company to issue stock in its name with full knowledge and notice that the Seven Stars Company had no title in the property in question, and that there is no finding upon that question.

(*r.*) That it cannot be ascertained from this finding whether the possession delivered by the Industrial Mining Guaranty Com-
372 pany to the Seven Stars Company was under the license contained in the Cowland contract or otherwise.

(*s.*) That the evidence does show that the Seven Stars Company took possession from the Industrial Mining Company of the property in question, with full knowledge and notice that the same was taken under the license contained in the Cowland contract [illegible] there is no finding upon that question.

(*t.*) That the finding to the effect that any money was paid out for machinery and other purposes with the knowledge and consent of Lawler and Wells, is immaterial.

(*u.*) That as to the finding marked "seventh," that so much of said finding that Warner and his associates undertook the preparation of a prospectus is uncertain and indefinite, in this; that it cannot be ascertained therefrom, whether or not Lawler and Wells were among such associates.

(*v.*) That the evidence shows that Lawler and Wells were not promoters of or interested in the corporation of the guaranty or Seven Stars companies, and there is no finding upon those questions.

(*w.*) That the facts therein found are immaterial.

(*x.*) The evidence shows that there is no false or fraudulent statements of fact contained in the American prospectus, and there is no finding of the court upon that question.

(*y.*) The evidence shows that as to the English prospectus, the directors of the Seven Stars or guaranty company, never
373 authorized the issuance of the circulated English prospectus, and there is no finding upon that question.

(*z.*) The evidence shows that the prospectus authorized by the directors of the guaranty company was never issued or circulated and there is no finding upon that question.

(*a*2.) The evidence does show that Lawler and Wells had no knowledge or notice of the contents of the English prospectus as authorized to be issued by the board of directors of the guaranty company and there is no finding upon that question.

(*b*2.) That the English prospectus as authorized to be issued by said board of directors does not contain any false or fraudulent statements of fact and there is no finding upon that question.

(*c*2.) That the finding that such prospectus was circulated is immaterial and imposes no duty upon these defendants.

(*d*2.) The evidence shows that the map distributed with the prospectus was not the map furnished by Lawler and Wells, and that there is no finding upon that question.

(*e*2.) The evidence does show that the wording on said map was changed from Hillside group of mines, to the words, belonging to the Seven Stars group of mines, without the knowledge or consent of Lawler and Wells, or either of them, and there is no finding upon that question.

(*f*2.) That the language or words contained in said map as
374 circulated put a stock purchaser upon inquiry as to the ownership of said property and there is no finding upon that question.

(*g*2.) That as to the finding marked "eighth," the finding that the prospectus contained statements to the effect that certain improvements had been erected upon the mining property, is immaterial, because the evidence shows that said statements were true.

(*h*2.) The evidence shows that the reports of mining engineers and of Blauvelt, were true and there is no finding upon that question.

(*i*2.) That as to the finding marked "ninth" the evidence does show that the amounts stated in the original ore and smelter receipts or returns, as delivered by Mr. Lawler to Mr. Warner, are true, and there is no finding of fact thereon.

(*j*2.) That in the 11th finding, so much of that finding as finds that the proposed stock purchasers bought their stock upon the belief that the said mines and mining properties were owned by the said Seven Stars Company, and that said company was a going and profitable enterprise, is contrary to the evidence, in this:

That a legal construction of the prospectus would not give any proposed stock purchaser the right to believe the facts as found by the court. Because no one or more of the proposed stock purchasers made their investment knowing or relying upon any act
375 of omission or commission of Lawler and Wells or either of them in the premises.

(*k*2.) That as to the finding marked 12th, wherein Lawler and Wells knew that Warner intended to organize a corporation and put the stock on the market, is contrary to the evidence.

(*l*2.) That so much of the 12th finding as finds that Warner and Cowland were obliged to or intended to look to receipts from the sale of stock to pay the purchase price of the mines, is contrary to the evidence.

(*m*2.) That so much of the 12th finding as finds that Lawler and Wells, prior to October 28th, 1892, or at any other time, received monies on account of the purchase price mentioned in the Cowland contract, was received by them with notice, that they were derived from the sale of stock of the Seven Stars Company, is contrary to the evidence.

(*n*2.) That so much of said finding as determines that all additions and improvements upon the property *was* paid for out of funds received from the sale of Seven Stars stock, is contrary to the evidence.

(*o*2.) That so much of the 13th finding that finds that a large amount of money was paid to Lawler and Wells for machinery and improvements, is contrary to the evidence.

(*p*2.) That so much of that finding that ascertains that money that was paid for machinery and improvements was paid from the sale of Seven Stars stock, is contrary to the evidence.

376 (*q*2.) That the evidence shows that between May 30, 1892, and the 29th day of September, 1892, there was paid to Lawler and Wells on account of the purchase price named in the Cowland contract $16,917.71.

(*r*2.) That the findings contained in the 14th paragraph to the effect that moneys were paid to Lawler and Wells from the sale of Seven Stars stock, is contrary to the evidence.

(*s*2.) That so much of the 15th finding as finds that the Seven Stars continued to make payments on account of the Cowland contract, is contrary to the evidence.

(*t*2.) That so much of said finding that finds that each and every payment thereafter, after May, 1893, was made by the Seven Stars Company, is contrary to the evidence.

(*u*2.) That so much of said finding that finds that Lawler and Wells had full knowledge and notice that the money was paid out by the Seven Stars Company is contrary to the evidence.

(*v*2.) That the evidence discloses that the 15th finding is not sustained by the evidence in this, that all moneys paid to Lawler and Wells on account of the Cowland contract, were paid by the guaranty company, from monies borrowed and not from amounts derived from the sale of Seven Stars stock.

(*w*2.) That the 17th finding is too indefinite and uncertain, in not

disclosing who were associated with Mr. Warner, that among
377 others the plaintiff, C. B. Wiser is estopped from saying that he had no knowledge or notice of the facts set forth in the finding.

(*x*2.) That so much of the 17th finding as finds that the plaintiffs and all of the other stockholders, except Warner and his associates, were ignorant of all these facts and circumstances and had no knowledge or notice in regard thereto, is contrary to the evidence in this; that it is shown that there are some 500 stockholders, of which *there* is proven that only about 20 or 30 stockholders *having* any knowledge or want of knowledge whatever.

(*y*2.) It does not appear from the findings why the mines were not operated, or that it was not due to anything wrongfully done by Lawler and Wells.

(*z*2.) And the evidence does show that Lawler took possession of said property for the purpose of preserving it and did not operate it for the want of funds, and there is no finding on that question.

(*a*3.) There was further error in the findings of the court, in this, that on the trial of said cause, the court refused to admit or consider any evidence relating to or following the identity of funds paid in by the Seven Stars Company stockholders, and the confusion thereof in the general business of the guaranty company. And in the said findings the court finds that all the monies paid to Lawler and Wells were the funds of the Seven Stars stockholders
378 and that Lawler and Wells took and received the same with knowledge thereof.

143. That the findings of fact are contrary to and not sustained by the evidence, in this:

(*a.*) That the Cowland contract is divisible in this; that a part of the contract is an escrow agreement, defining the terms and conditions upon which the purchase-money is to be paid, and another portion of the agreement is a license for Charles Cowland, or his agent to enter into possession and operate the property under the license, and there is no finding that said contract is so divisible.

(*b.*) That there is no finding that at the time the Cowland contract was entered into, there was any intentions on the part of Lawler and Wells or either of them to defraud and deceive any individual or the public.

(*c.*) That there is no evidence tending to show that at the time the Cowland contract was entered into, that Lawler and Wells, or either of them intended to defraud or deceive any person or the public.

(*d.*) That so much of the 9th finding as finds that the court is unable to determine whether Wells at his visit to New York knew anything about the preparation of these prospectuses, is contrary to the evidence in this; that the uncontradicted evidence does show that Mr. Wells had no conversation with Mr. Warner or any other person upon that subject while in New York, and had no knowledge of it whatever.

379 (*e.*) That so much of the findings of the court contained in the 9th finding, as are contained between the words "further-

more it is almost inconceivable," to and including the words "respective visits to New York," both inclusive, is not a finding of fact, but an argument.

(*f.*) That the uncontradicted evidence shows that the Industrial Company and the Seven Stars Company went into possession of the property under the license contained in the Cowland contract of May 12.

(*g.*) That Lawler and Wells acquiesced and consented to the possession of the guaranty company and Seven Stars Company under the said license and in no other way.

(*h.*) That the construction of the court concerning the prospectus is contrary to the legal construction that ought to be placed upon the terms, language and conditions thereto.

(*i.*) That the preponderance of evidence does not show that Mr. Lawler had any knowledge or notice of the facts or statements contained in the prospectuses as issued.

(*j.*) In the 10th finding to the effect that a part of all the funds received by the Industrial Company from the sale of the Seven Stars stock, was paid out by the Bank of Arizona, for certain purposes, is contrary to, and not sustained by the evidence.

(*k.*) In the 11th finding that a large part of the Seven Stars stock was subscribed and paid for under the belief that the mines
380 were owned by the Seven Stars Company, is not sustained by, and is contrary to the evidence.

(*l.*) The court erred in finding that the stock was subscribed and paid for without the plaintiffs or any of the stockholders of the Seven Stars Company having knowledge that the Seven Stars Company did not own the mines and mining property or that said Lawler and Wells had or claimed any right, title or interest therein, because same is not sustained by, and is contrary to the evidence.

(*m.*) The findings are insufficient in this:

That it cannot be ascertained therefrom whether or not Lawler and Wells entered into the Cowland contract with the intent to defraud or deceive the stockholders or any of them or the public.

144. That the findings are contrary to law, in this:

(*a.*) That the directors of the Seven Stars Company cannot be heard to say, that the legal title to the property in question never passed to the Seven Stars Company.

(*b.*) That the alleged stock purchasers cannot be heard to say that the legal title to the property in question never passed to the Seven Stars Company.

(*c.*) That the alleged purchasers of stock in the Seven Stars Company cannot be heard to say that the possession delivered to the Seven Stars Company was not under the license contained in the Cowland contract.

381 (*d.*) That the officers of the Seven Stars Company cannot be heard to say that the possession delivered to the Seven Stars Company by the Industrial Mining Company on October 1st, 1892, of the property in controversy, was not under the license contained in the Cowland contract.

(*e.*) That so much of the 6th finding as shows that money was

paid out by the Seven Stars Company for machinery, labor and opperation of the development of the mines, is insufficient in law, in this; that the officers of the Seven Stars Company had full knowledge and notice of the same, that it was paid out under the terms and conditions contained in the Cowland contract of May 12, 1892.

(*f.*) That the 8th finding is insufficient in law, in this; that the finding to the effect that the Seven Stars Company was organized for the purpose of acquiring on October 1st, 1892, as a going concern, the mines and mining property and appurtenances fully described and set out therein and without further expense to the stockholders, of said company, is not a false and fraudulent statement of any fact as to the title of the property, in this, to wit: the same is an expression of an opinion or a promise to do something in the future; the language put a proposed stock purchaser upon notice and inquiry, that the title was not in the Seven Stars, that the title to the property was to be acquired by the Seven Stars Company at some future time, after the issuance of the
382 American prospectus.

(*g.*) That so much of the 8th finding as finds that said prospectus contained assertions in regard to the title reciting that certain of the properties described in the prospectus and accompanying map were held under United States patent, was indefinite and uncertain, because the same does not state in whom the title was vested, and no inference can be drawn therefrom or from the whole prospectus that the title of the property was vested in the Seven Stars Company.

(*h.*) That the statement contained in said prospectus as a mere expression of opinion, is not the statement of a fact then existing that the title was in the Seven Stars Company.

(*i.*) That the finding that the Blauvelt report or maps and smelter receipts were turned over to Warner by Lawler and Wells on *May 12th, 1892*, is insufficient in law, to show fraud upon the part of Lawler and Wells.

(*j.*) That so much of the 8th finding as finds that Lawler furnished the original ore and smelter receipts to Mr. Warner is insufficient to bind Lawler and Wells, and does not tend to prove fraud or deception on the part of Lawler and Wells or either of them.

(*k.*) That it is immaterial that John Lawler and Ed. W. Wells knew or saw a copy of any prospectus, for the reason that there are no misrepresentations of fact therein contained.

383 (*l.*) That the receipt by the Bank of Arizona of any prospectus is immaterial, because there is no misrepresentations in said prospectus contained and the receiving of the same by the Bank of Arizona is not binding upon these defendants or either of them.

(*m.*) That any prospectus sent to the Bank of Arizona, at the request of Hazeltine, the cashier of the bank, at his request, is immaterial, because there is no misrepresentations of fact contained in said prospectus, as to the title of said property, and the mere fact that

Wells was a stockholder in said bank, would not make the acts of Hazeltine, binding upon Lawler and Wells.

(*n.*) That these plaintiffs cannot be heard to complain of the agency of the Bank of Arizona, as found in the 10th finding, for the reason, that all acts and things done there, were done as contemplated by the Cowland contract of May 12, 1892. And the facts therein stated do not constitute a fraud and no inference of fraud can be drawn therefrom on the part of Lawler and Wells.

(*o.*) That so much of the 11th finding that finds that the stock of Seven Stars Company was sold aggregating $250,000, is immaterial for the reason first: It is not shown that at or before the time of the purchase of any stock, that any proposed stock purchaser knew or relied upon any act of commission or omission of Lawler and Wells in the premises.

384 2nd. That any proposed purchaser of stock knew of the delivery of the Blauvelt maps ore and smelter returns by Lawler or of Mr. Lawler's visit at New York, and any transactions there occur-ing, or of the receipt of or knowledge by Lawler and Wells of any of the prospectuses.

3rd. The evidence does not show that the proposed stock purchasers have ever rescinded or offered to rescind their contract of purchase.

4th. The evidence does show that each of the stockholders have received dividends on account of the payment of stock, and they cannot be heard to say that the mining property is liable for their purchase price of stock.

5th. That the evidence does show that each and every of the stockholders had notice and knowledge that the title to the property was not vested in the Seven Stars Company. That they were investing their monies in the stock of said company for the purpose of buying or being used to acquire the title to this property.

6th. That the proposed stock purchasers were not buying into the title of the property.

7th. That no stockholder has any interest in the title to the property until after dissolution of the corporation and the distribution of assets.

8th. That the evidence does not show that Lawler and Wells owed any duty to any one or more of the proposed stockholders.

385 9th. That the evidence does show that no fiduciary relations existed at any time between Lawler and Wells or either of them and one or more of the proposed stock purchasers.

(*p.*) That in the 11th finding the court finds that the preposed stock purchasers purchased their stock under the belief that the mines and mining properties were owned by the Seven Stars Company, as a going and profitable enterprise, and the legal construction of the prospectus circulated will not bear out the right to such a belief.

(*q.*) That the plaintiff, Wiser, cannot be heard to say that he did not know the condition of the title of the property and participate in the result of said finding, because he was a director in the Seven Stars Company and over whose name the prospectus was issued.

(*r*.) That so much of the 12th finding as finds that whether or not Lawler and Wells were informed or had notice that Warner did not intend to pay the purchase price, or only as he realized it from the sale of stock, is insufficient.

(*s*.) That so much of finding 12, as finds that *the* Warner secured an extension of the payments provided for in the Cowland contract and that at that time,— had notice that Cowland and Warner were unable to make further payments, is insufficient in law.

(*t*.) That Hedges became the assignee of Warner as found in the 14th finding, is insufficient in law.

386 (*u*.) That the findings contained in the 14th paragraph do not show any fraudulent act on the part of these defendants and from the findings of fact therein, no inference of fraud can be drawn.

(*v*.) That Warner Miller raised or assisted in raising $400,000, is insufficient in law.

(*w*.) That the findings that Lawler and Wells received Seven Stars stock as a bonus for an extension of the Cowland contract is insufficient in law.

(*x*.) That the findings that Lawler was appointed general manager in 1893, is insufficient in law.

(*y*.) That the finding to the effect that the Cowland contract was extended on October 28th, could not at most make these defendants liable only for monies that were thereafterwards paid in, and there is no evidence that any stock monies were thereafter paid in that could be traced into the hands of Lawler and Wells.

(*z*.) That so much of the 14th finding as determines that the Cowland contract was extended in May, 1893, would not bind these defendants, except for monies that were thereafterwards paid in on the purchase of stock, and no monies were thereafter paid in on account of purchase price of stock.

(*a*2.) That so much of the 17th finding that finds that the 387 plaintiffs and all other stockholders except said Warner and those associated with him, in the management of said property, were ignorant of all these facts and circumstances and had no knowledge or notice in regard thereto, is insufficient in law, in this:

That the said stockholders did not buy into the title; that their investment was a common fund for the operation and business of the corporation, among which was the acquiring of the title to this group of mines. Because the evidence shows that no one or more of the stockholders knew anything about the delivery of the Blauvelt maps ore and smelter returns, or the visit of Lawler to New York, and the transactions there occurring, or the extensions of said Cowland contract, or of the receipt by Lawler and Wells or the Bank of Arizona of any prospectus, or their knowledge of the distribution of said prospectus.

(*b*2.) That so much of the 17th finding, to the effect that plaintiffs were authorized and directed by certain stockholders to bring this suit, is insufficient in law, in this; that the said meeting is not shown to have been a duly called meeting of the stockholders of said cor-

poration, and it does not appear that the chancery court of the State of New Jersey in which said receiver was appointed, authorized the commencement of said suit, and there is no evidence tending to show that any application of any one or more of said stockholders was made to said chancery court, for the purpose of authoriz-
388 ing the bringing of this suit.

145. That the conclusions of law and interlocutory decree are not sustained by the evidence and findings, and *is* contrary to law, in this:

(*a.*) That the court has no jurisdiction over the subject-matter of this action, in this:

1st. That the evidence shows that each proposed stock purchaser made his purchase upon an independent contract, different from any other stockholder.

2nd. That it does not appear that there is any unity of interest among the several plaintiffs herein, or those alleged to be in like estate with them.

3rd. That the complaint herein is based upon the theory that the action is brought on behalf of the corporation, but the decree is based solely upon the individual right of the stockholders without proof of unity of interest.

(*b.*) That the evidence does show that the value of the property was $450,000, and that these defendants have not received the full purchase price thereof.

(*c.*) That by the non-payment of the amount which became due September, 1st, 1893, and the non-payment or tender of any sum thereafter due these defendants on account of the purchase price mentioned in the Cowland contract, wholly forfeited all right, title and interest of the Seven Stars Company or the guaranty com-
389 pany and all persons holding by, through or under the said Cowland contract, in the said property or any part thereof.

(*d.*) That so much of the 9th finding as finds that Mr. Lawler in his visit to New York knew of the preparation of the prospectus, is immaterial, because the said prospectus does not contain any statement of fact that is false or fraudulent.

(*e.*) That no inference of fraud can be drawn from the delivery of the returns ore and smelter returns by Mr. Lawler to Mr. Warner, for the reason that the facts therein stated are proven to be true.

(*f.*) That the want of knowledge in the stockholders that the title was not vested in Seven Stars Company, is immaterial in this; that they or either of them did not buy their stock knowing or relying upon any act of commission or omission of Lawler and Wells or either of them.

(*g.*) That so much of the 15th finding as finds that the payment to Lawler and Wells, due on September 1st, 1893, was not paid, does not sustain the interlocutory decree.

(*h.*) That there is a variance between the complaint and the findings of fact and interlocutory decree herein, in this, that the action is brought originally on behalf of a corporation and the corporation cannot be heard, and is estopped from asserting and alleging the

matter set up in the complaint, and the cause of action has
390 been changed, from one on behalf and for the benefit of the company, to one for the use and benefit of the individual stockholders.

(*i*.) The court erred in the fourth subdivision of its decree in adjudging *the* Lawler and Wells or either of them, have any right, title or interest in and to any of the mines and mining properties described, or any lien upon, or equity in the same, except subject and subordinate to the rights and equities of the stockholders of the Seven Stars Company, for the reason that there is no evidence to support an estoppal.

(*j*.) That the doctrine of estoppel is never used as a weapon of assault.

(*k*.) That the evidence shows that Lawler and Wells on the 12th day of May, 1892, ever since continuously hitherto have been and are now the owners of the legal title to said property and every part thereof, and that the muniments thereof ever since have been and are now of record in the office of the county recorder of Yavapai county, Arizona Territory, in which said property is situated.

(*l*.) That a court of equity has no power or jurisdiction to decree the passage of the legal title from one person to another.

(*m*.) That there is no evidence tending to show that the stockholders or any one of them, have any lien upon the property in cor troversy or any part thereof, for any purchase-money paid
391 into the guaranty company on account of the purchase of any one or more shares of stock of the Seven Stars Company.

(*n*.) That no one or more or all of the stockholders of the Seven Stars Company have any lien upon the property in controversy or any part thereof from any moneys paid by them or either of them on account of the purchase of Seven Stars stock.

(*o*.) The court erred in appointing a receiver herein, for the reason that Lawler and Wells were in possession of the property, preserving the same in good and workmanlike manner, miner-like fashion, and there was no evidence tending to show any waste, irreparable injury, or destruction to the property or any part thereof, while in their possession.

(*p*.) That the presumption is that the parties to the Cowland escrow agreement, entered into the same in good faith and for a valuable consideration, and there is no evidence to rebut the presumption.

(*d*2.) That there is no evidence tending to show that Lawler and Wells entered into the Cowland contract with the intent to defraud, cheat or deceive the plaintiffs or those alleged to be in like estate with them or any others.

(*e*2.) That the evidence does show that on May 12, 1892, ever since and now, the legal title to the mining property described in the escrow deed of May 12, 1892, was vested in Lawler and Wells and of record in the office of the county recorder of Yavapai
392 county Arizona, and there is no evidence tending to show that Lawler and Wells have ever been divested of that title.

(*f*2.) That the uncontradicted evidence is that T. A. Rickard took

possession of the property in controversy for the H. H. Warner Investment Company under and by virtue of the license contained in the Cowland contract and not otherwise, and with full knowledge of the legal title thereto being vested of record in Lawler and Wells.

(*g*2.) The uncontradicted evidence is that on June 15, 1892, the guaranty company became the successor of the investment company of its possession of the property under said license, with full notice and knowledge of the Cowland contract, and that the legal title thereto was then vested in Lawler and Wells.

(*h*2.) That the assignment of the Cowland contract and license therein contained to the guaranty company was made without the knowledge or consent of Lawler and Wells.

(*i*2.) That the uncontradicted evidence is that the Seven Stars Company never had any legal title to the property, and that the Seven Stars Company went into possession of said property under the license contained in the Cowland contract, with full knowledge thereof, and with full knowledge and notice that the legal title to the property in controversy was then vested in Lawler and Wells.

(*j*2.) That the evidence does not show any duty on the
393 part of Lawler and Wells to any proposed stock purchaser or stockholder of the Seven Stars Company.

(*k*2.) That the evidence does not show any fiduciary relation between Lawler and Wells and any proposed stock purchaser or stockholder of the Seven Stars Company.

(*l*2.) That there is no evidence tending to show constructive fraud on the part of Lawler and Wells as against any proposed stock purchaser or stockholder of the Seven Stars Company.

(*m*2.) That there is no evidence tending to show actual fraud on the part of Lawler and Wells as against any proposed stock purchaser or stockholder in the Seven Stars Company.

(*n*2.) That there is no evidence tending to show that there were any business relations or transactions of any kind or nature between Lawler and Wells and any proposed stock purchaser or stockholder of the Seven Stars Company.

(*o*2.) That there is no evidence tending to show that Lawler and Wells or either of them, made any fraudulent representations or committed or suffered any acts to be committed, which amount to false representations, deceit or fraud.

(*p*2.) There is no evidence that any proposed stock purchaser or stockholder had any knowledge of any act or omission of the said Lawler and Wells or either of them, or in the purchase of the said stock knew of or were informed of, or relied upon any representations expressed or acts done by Lawler and Wells or either
394 of them in the premises. That there was no evidence tending to show that any proposed stock purchaser or stockholder at the time he purchased stock of the Seven Stars Company, knew that the Blauvelt maps or smelters' reports had been delivered by Lawler and Wells to Rickard or the guaranty company, or of Lawler's visit to New York in September, 1892 and the transactions there occurring, or of any other fact or act alleged or proven to have been

done by Lawler and Wells or either of them prior to purchasing of the stock.

(*q*2.) That the furnishing of the Blauvelt maps and smelters' returns do- not constitute actual or constructive fraud.

(*r*2.) That the facts and occurrences between Lawler and Warner and others at New York in September, 1892, do not constitute actual or constructive fraud.

(*s*2.) That the facts and circumstances as proven in the case, do not prove an actual or constructive fraud.

(*t*2.) That the facts and circumstances in the case do not create a constructive trust.

(*u*2.) That there are no fraudulent representations contained in the American prospectus.

(*v*2.) That there is no evidence tending to show that Lawler and Wells ever knew of the English prospectus as circulated.

(*w*2.) That the evidence does not show that Lawler and
395 Wells ever knew of the English prospectus as authorized by the board of directors of the guaranty or Seven Stars Company.

(*x*2.) That there is no evidence tending to show that the directors of the guaranty company or the Seven Stars Company ever authorized the issuance and circulation of the English prospectus mentioned in Quintin's deposition.

(*y*2.) That there is no evidence tending to show that Lawler and Wells or either of them were estopped from asserting the legal title to the property in controversy or any part thereof as against the Seven Stars Company or any stockholder thereof.

(*z*2.) That the pleadings and evidence do show that the stockholders and each of them have a full and complete and adequate remedy at law in this, to wit: in an action against the directors of the Seven Stars Company, and there is no proof of their insolvency; in an action against the guaranty fund mentioned in the guaranteed stock, and there is no allegation or proof of the destruction of that fund.

(*a*3.) That no presumption of fraud arises from the Cowland agreement, and there was no fraud actual or constructive in the extensions of said Cowland agreement.

(*b*3.) That no inference of fraud can be drawn from the fact that John Lawler was appointed manager in 1893, or that said Lawler and Wells received stock in the company in consideration of
396 an extension of the terms of payment on said Cowland agreement.

(*c*3.) That the extension of payment under the Cowland agreement in nowise affected the license therein created, or the relations of parties thereto.

(*a*4.) That the proposed purchasers of stock of the Seven Stars Company and each of them, and the stockholders thereof and each of them, have no right, title nor interest in the property in controversy or of the corporation, until a dissolution and distribution of the assets of the corporation.

(*a*5.) That the stockholders and each of them have no lien estate

or interest in and to the property in controversy, for any monies paid in by them to the guaranty company.

(a6.) That the evidence shows the guaranty company was a promoter of various enterprises, and diverted monies paid in by the stock purchasers, to various other enterprises, and there is no proof that any monies paid in by any stockholders, went into the hands of Lawler and Wells or into said property. The evidence does show that the identity of all monies paid in by stockholders in the Seven Stars Company was lost in the business transactions of the guaranty company, and these defendants or the property in controversy cannot be held liable for the same or any part thereof.

(a7.) That the evidence does show that some or all of the stockholders purchased solely upon the guarantee of H. H. Warner
397 and no one of them made any purchase of stock upon any representations or act done by Lawler and Wells or either of them.

146. (a.) That there is no finding that any statement, phrase or language contained in the American prospectus was false or falsely made with intent to defraud.

(b.) That there is no finding that any statement, phrase or language contained in the English prospectus was false or falsely made with intent to defraud.

(c.) It does not appear therefrom that defendant Wells participated in or had any knowledge of any statements contained in the American prospectus.

147. That the judgment ought not to have been given for the said plaintiffs. That these defendants ought to have had judgment foreclosing their vendor's lien upon the property in controversy for unpaid purchase-money, according to the terms of the Cowland contract and the extensions thereof.

148. That the court erred in admitting evidence.

149. That the court erred in rejecting evidence.

150. That the evidence does not sustain the judgment.

151. (a.) That these defendants are entitled to a new trial under this clause for the reason that after the rendition of the interlocutory decree herein, and during the November term of this court, begun on the first Monday in November, 1897 and before these defendants had an opportunity to present a bill of exceptions of the errors
398 occurring upon the trial hereof and within the time provided by law for the presentation of such bill of exceptions, the Honorable H. C. Truesdell, chief justice of the supreme court of Arizona, and trial judge in this cause, departed this life.

(b.) Because there is no statute of Arizona in aid of settling, allowing and signing a bill of exceptions where the trial judge has died after the trial of the cause and before the time for settling, allowing and signing the bill of exceptions.

(c.) Because of the death of the trial judge after the interlocutory decree and before final decree or of evidence taken upon which to render a final decree, the right of the plaintiffs to a final decree thereto, perished with the death of the trial judge.

152. That the master erred in overruling the objections to the in-

troduction of testimony on the hearing of the case, more fully set out in the objections on file.

153. The court erred in overruling the exceptions of these defendants to the master's report.

154. That the finding, interlocutory decree and master's report, does not sustain the decree.

155. That the court erred in decreeing that the monies paid to Lawler & Wells on account of the purchase price of the Cowland contract, namely, one hundred and twelve thousand, three hundred and thirty-nine dollars and ninety-six cents, to be a lien upon
399 the property described in the decree.

156. That the court erred in decreeing that the monies arising from the gross proceeds of the sale of ore and bullion from the mines in controversy, amounting to $67,799.86 and paid to Lawler & Wells under the Cowland contract, to be a lien upon the property described in the decree.

156 (*a*). That the plaintiffs and each of them have no lien upon said property or any part thereof for any monies paid to Lawler & Wells on account of the purchase price named in the Cowland contract.

157. That the said judgment ought to have been for these defendants upon the cross-bill annexed to their answer to the amended complaint.

158. That the court has no jurisdiction over the subject-matter.

159. That the plaintiffs and each of them have a full and complete and adequate remedy at law, against the directors of the corporation.

160. That the plaintiffs and each of them have a full and complete and adequate remedy at law against the guaranty fund mentioned in the evidence.

161. That the relations of these defendants to the plaintiffs and each of them were in nowise fiduciary.

162. That these defendants did not at any time owe any duties to the said plaintiffs or either of them.

400 163. That the said court in its findings declares that there was no actual fraud.

164. That the facts are not sufficient in law to create a constructive fraud.

165. That there is no facts showing a constructive trust herein.

166. That the said judgment is not sustained by the evidence.

167. That the said judgment is contrary to law.

Dated Prescott, Arizona, July 11th, 1898.

HERNDON & NORRIS,
J. F. WILSON,
E. M. SANFORD,
*Attorneys for Defendants Lawler and Wells.*

(Endorsed:) No. 2365. In the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai. Clinton B. Wiser, *et al. vs.* Lawler and Wells. Motion for new trial. Filed at 3 o'clock p. m. Jul- 12, 1898. J. M. Watts, clerk.

401 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

CLINTON B. WISER ET AL.
*v.*
JOHN LAWLER ET AL.

And now come the said plaintiffs, and by leave of court, file herein the following amendment to their amended complaint filed in this court on May 13th, 1896:—

Beginning with the word, "wherefore," on page 23 (144) of said amended complaint, and concluding with the word, "pray," on the thirteenth line of page 25 (146) of said amended complaint, to be stricken out, and in lieu thereof said amended complaint to read as follows:—

Wherefore, the said plaintiffs bring this suit on behalf of themselves and all others in like estate, in this court of equity, where grievances of the character here shown are cognizable and remediable, and make defendants hereto the said John Lawler, Ed. W. Wells, The Seven Stars Gold Mining Company, The Industrial Mining & Guaranty Company, and John Griffin, receiver, and pray that each of the said defendants may be required to make answer unto this complaint, but not under oath, answer under oath being hereby waived, and upon the facts hereinbefore alleged the said complainants pray:—

402 1. That this honorable court, upon the final hearing hereof, decree that the defendants Lawler and Wells have by their conduct estopped themselves and they are now estopped as against the plaintiffs and others in like estate from asserting that the Seven Stars Gold Mining Company is not the owner of the mines and mining properties described on the prospectus and pictured upon the said map, and ordering, adjudging and decreeing that the full title to the said mines and mining properties, and the improvements thereon, and the personal estate therewith connected, and every part thereof, is in the said Seven Stars Gold Mining Company, to be held by the said mining company under such decree for the benefit and in the interest of its *bona fide* stockholders, plaintiffs and others in like estate, and perpetually enjoining the said defendants, John Lawler and Ed. W. Wells, from in anywise questioning such title, with a like provision in said decree for an accounting, and a money judgment against the said defendants upon such accounting, for all the proceeds and value of ore and bullion and other property taken from the said mines and mining properties and received and retained by the said defendants, Lawler and Wells, between the 12th day of May, 1892, and the date of the entry of the final decree herein, together with a like money judgment against Lawler and Wells for all damage caused by them to said mines and mining properties by and since the alleged seizure aforesaid, the said money judg-

403 ments to run to the said Seven Stars Gold Mining Company in the interest and for the benefit of its *bona fide* stockholders, plaintiffs and others in like estate.

2. Or, that this honorable — may order, adjudge and decree upon the final hearing hereof, that the said plaintiffs and all others in like estate, may have and recover from and of the said defendants John Lawler & Ed. W. Wells, the aggregate amount of money paid by the said plaintiffs and others in like estate for stock in the Seven Stars Gold Mining Company upon the prospectuses and maps in the manner hereinbefore set out, and upon the payment thereof by Lawler and Wells the title to said mines and mining properties be decreed to be in them.

3. Or, that upon a final hearing hereof that this honorable court may order, adjudge and decree in favor of the plaintiffs and others in like estate, such other or different relief upon the facts hereinbefore alleged as to this honorable court may seem just and equitable.

G. W. KRETZINGER,
T. W. JOHNSTON, AND
M. F. GALLAGHER,
*For Plaintiffs.*

(Endorsed:) 2365. C. B. Wiser, *et al. vs.* Lawler & Wells *et al.* Amendment to amended complaint. Filed Nov. 1st, 1898, at 10 o'clock a. m. J. M. Watts, clerk.

404 In the District Court of Yavapai County, Arizona.

CLINTON B. WISER ET AL., Plaintiffs,
*vs.*
JOHN LAWLER ET AL., Defendants.
} Findings of Fact.

This cause came on for trial on the first day of November, 1898, before the court without a jury, and thereupon the plaintiffs to maintain the issues on their part joined, introduced evidence and rested, and thereupon defendants, John Lawler and Ed. W. Wells introduced evidence to support the issues on their part joined and rested, and after hearing the evidence and proofs produced and the arguments of counsel, the court now finds as facts herein the following, to wit:

1. That on the 12th day of May, 1892, ever since and now, the defendants John Lawler and Ed. W. Wells were and are the owners of the legal title to the mines and mining claims more particularly described in the pleadings herein, and hereby denominated and hereinafter referred to as the Hillside group of mines. The muniments of title showing such ownership in said Lawler and Wells were then, ever since have been and are now of record in the office of the county recorder of the county of Yavapai, Territory of Arizona, in which said county said mines were and are now situate; that John Lawler and Ed. W. Wells were and are co-
405 tenants in said group of mines, the said Lawler owning an undivided three-fourths interest therein and the said Wells owning an undivided one-fourth interest therein.

2. That shortly prior to May 12, 1892, the defendants, John Lawler

and Ed. W. Wells offered said mines for sale at the purchase price of four hundred and fifty thousand dollars ($450,000.00) cash.

3. That some three or five days previous to May 12, 1892 H. H. Warner, accompanied by one T. A. Rickard, a mining expert, visited this group of mines and made an examination of the same; after such examination they returned to Prescott, Arizona, and there entered in negotiations with Lawler and Wells for the purchase of said property, and as a result of such negotiations the purchase price of said property was fixed at four hundred and fifty thousand dollars ($450,000.00), payable twenty thousand dollars ($20,000.00) in cash and the remainder payable in installments in accordance with the terms of an escrow agreement, on May 12, 1892, entered into by and between John Lawler and Ed. W. Wells on the one part, and Charles Cowland on the other part, a true copy of which is attached to the answer of Lawler and Wells, filed September 13, 1897 to the amended complaint and marked Exhibit "A;" that contemporaneously with the execution of said escrow agreement a deed was signed by the grantors therein named, to wit:

John Lawler, Ed. W. Wells and Rosa Wells as the wife of the
406 said Wells, and therein said Charles Cowland was named as grantee, and in said deed the consideration was fixed at the purchase price of said property, to wit, the sum of four hundred and fifty thousand dollars ($450,000.00) and further therein the said Hillside group of mines was particularly described, a true copy of which said deed is attached to said answer and marked "Exhibit B;" that contemporaneously with the signing of said escrow agreement and deed, the said H. H. Warner signed an instrument in writing, a true copy whereof is attached to said answer and marked "Exhibit C;" that afterwards and on the 12th day of May, 1892, the original of said escrow agreement, "Exhibit A," the original of said deed, "Exhibit B," and the original of said instrument in writing signed by H. H. Warner, "Exhibit C," were by the said Warner, John Lawler and Ed. W. Wells deposited in the Bank of Arizona at Prescott, Arizona as the escrow holder thereof in accordance with the terms, conditions and provisions contained in said escrow agreement, "Exhibit A."

4. That while the originals of said Exhibits "A" and "B" were executed in the name of Charles Cowland, the said Cowland was the agent of said H. H. Warner and said Warner was the real party in interest in said transaction.

5. The said escrow agreement, Exhibit "A," and deed, Exhibit "B" were never recorded but remained in the possession of said
Bank of Arizona as the escrow holder thereof to and until
407 November 10, 1893.

6. That at the time of the execution of said escrow agreement, Exhibit "A" and said deed, Exhibit "B," the defendants, John Lawler and Ed. W. Wells knew that H. H. Warner contemplated the forming of a corporation to operate said group of mines and eventually vest the title thereof in said corporation, on compliance with the terms of said escrow agreement.

7. That on or about the 15th day of May, 1892, John Lawler de-

livered to T. A. Rickard as the agent of Charles Cowland the occupation of said group of mines under the terms and conditions contained in the license embodied in said escrow agreement, Exhibit "A;" that from May 15th, 1892, to the 15th day of June, 1892, the funds necessary to carry on the operations of said mines under the administration of said Rickard, were furnished by the H. H. Warner Investment Company, a corporation, of which the said H. H. Warner was during that time the president, the amount of which said funds does not appear in the evidence.

8. That on the 14th day of June, 1892 said H. H. Warner, William M. Earl, William R. Kennard, Francis B. Bowen and Charles Cowland incorporated under the laws of the State of New Jersey, the Industrial & Mining Guaranty Company, with a capital of five hundred thousand dollars ($500,000.00) divided into five thousand (5,000) shares of the par value of one hundred dollars ($100.00) each, and on June 15, 1892 that corporation was organized with said incorporators as directors, with H. H. Warner as president, William R. Kennard vice-president, William M. Earl as secretary and Francis B. Bowen as treasurer.

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9. That on the 15th day of June, A. D. 1892 said Charles Cowland made and delivered to the Industrial & Mining Guaranty Company a written assignment of all his right, title and interest in and to the escrow agreement "Exhibit A" aforesaid, a true copy of which said written assignment is attached to said answer and marked "Exhibit D;" that contemporaneously with the execution and delivery of said written assignment, "Exhibit D" the said Charles Cowland made and delivered to said Industrial & Mining Guaranty Company a deed of conveyance, a true copy of which said conveyance is attached to said answer and marked "Exhibit F;" that contemporaneously with the execution and delivery of said assignment "Exhibit D," and said conveyance "Exhibit F," the said H. H. Warner made and delivered to said Industrial & Mining Guaranty Company a written consent to the making of said assignment and deed, Exhibits "D" and "F," a true copy of which said written consent is attached to said answer and marked "Exhibit E;" that at the time the said Industrial & Mining Guaranty Company took and received said assignment "Exhibit D," said written consent, "Exhibit E" and said conveyance "Exhibit F" from the said Charles Cowland, to wit, on June 15, 1892, the said Industrial & Mining Guaranty Company had full knowledge and notice of the terms, conditions and provisions of the escrow agreement, "Exhibit A" aforesaid, and then and there by resolution of the board of directors of said Industrial & Mining Guaranty Company, the said Industrial & Mining Guaranty Company assumed all the covenants, conditions and agreements in the said escrow agreement "Exhibit A" aforesaid on the part of said Charles Cowland to be kept and performed, and further by said resolution, said Industrial & Mining Guaranty Company promised to carry out and perform said escrow agreement, "Exhibit A" and all the terms, conditions and covenants therein contained on the part of said Cowland to be performed and make the payments for said mines, min-

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ing properties and other goods and chattels provided for in said escrow agreement, "Exhibit A" and procure said deed for the same then in the hands of the Bank of Arizona.

10. That on the 15th day of June, 1892 the said T. A. Rickard delivered to the Industrial & Mining Guaranty Company the occupation of said Hillside group of mines and on that day the said company entered into occupation of said group of mines with full knowledge and notice of the terms, conditions and provisions of the escrow agreement, "Exhibit A" aforesaid; that said company remained in occupation and operation of said Hillside group of mines from June 15, 1892 to and until the first day of October, 1892.

11. That on the 15th day of August, 1892, said H. H. Warner, William M. Earl and one Robert S. Hudspeth as incorporators, procured a certificate of incorporation of the Seven Stars Gold Mining Company under the laws of the State of New Jersey,
410 with a capital of three million dollars ($3,000,000.00) divided into six hundred thousand (600,000) shares of five dollars ($5.00) each, wherein, among other things, said corporation was authorized to hold, operate and convey mines; that afterwards and on the 24th day of September, 1892 the said Seven Stars Gold Mining Company was organized by the election of the following-named directors, to wit: Warner Miller, Hulbert H. Warner, J. Clifford Richardson, J. Herbert Jefferis, Arthur G. Yates, John W. Vrooman, B. E. Chase, Clinton B. Wiser and Robert S. Hudspeth, with H. H. Warner as president, Robert S. Hudspeth as vice-president and Harold J. Footner as secretary and treasurer.

12. That on the 10th day of September, 1892 the Industrial & Mining Guaranty Company through its board of directors, by a resolution duly adopted, did offer to sell and convey all its right, title and interest in the following mining properties, a portion of which are described in the escrow agreement and deed, Exhibits "A" and "B" aforesaid, to wit, the Seven Stars, Happy Jack, Contact No. 1 and Contact No. 2 mines, also the claim known as Camp, and the locations known as Mescal, Elwood, Midnight, Waterfall and Boulder, and all its right, title and interest in the 180 acres of land at Camp Wood, including town sites and water rights, to a company formed or to be formed and known as the Seven Stars Gold Mining Company, upon said company showing that it
411 had placed two hundred thousand dollars ($200,000) for working capital and upon receiving two million eight hundred thousand dollars ($2,800,000) in cash or stock of the Seven Stars Gold Mining Company, and by said resolution the officers of said company were instructed and empowered to sign the necessary contracts and to deliver deeds of the same upon compliance with said conditions.

13. That on the first day of October, 1892 the Industrial & Mining Guaranty Company placed the Seven Stars Gold Mining Company in the occupation of said Hillside group of mines, and on that day the latter company entered into said occupation with full knowledge and notice of the terms, conditions and provisions contained in the escrow agreement "Exhibit A" aforesaid, and with full knowledge

and notice of the resolution of the board of directors of the Industrial & Mining Guaranty Company referred to in finding 12 herein.

14. That the Industrial & Mining Guaranty Company, acting as the duly authorized agent of the Seven Stars Gold Mining Company under date of September 24, 1892, issued a prospectus known as the American prospectus in aid of and to promote the sale of the stock of the Seven Stars Gold Mining Company, a true copy of which said prospectus is attachod to the original complaint herein and marked "Exhibit C."

That some 300,000 of said American prospectuses, accompanied by a map and application for subscription to stock, copies of which are attached to the original complaint and likewise marked
412 "Exhibit C," the circulation of which said prospectus commenced about the 20th of September, 1892.

15. That on October 3, 1892, the Industrial & Mining Guaranty Company as the duly authorized agent of the Seven Stars Gold Mining Company, by a resolution of the board of directors of said Industrial & Mining Guaranty Company duly adopted, did authorize and direct an English prospectus to be issued, a true copy of which said prospectus is attached to the minutes of the Industrial & Mining Guaranty Company under date of October 3, 1892 and contained in "Exhibit 73" attached to the deposition of John Griffin on file herein; that the prospectus in this paragraph mentioned was never circulated in England or elsewhere.

16. That a prospectus was issued and circulated in England without the authority of the board of directors of the Industrial & Mining Guaranty Company or of the Seven Stars Gold Mining Company, a true copy of which said prospectus so circulated in England is attached to the original complaint herein and marked "Exhibit D;" this prospectus was prepared, supervised and circulated by Charles Cowland. The descriptive matter in this prospectus was based upon data furnished him by the officers of the Industrial & Mining Guaranty Company; the circulation of this prospectus commenced about the 5th day of October, 1892, and amounted to about 80,000 copies; accompanying each copy of this prospectus was a map and
413 application for subscription for stock, true copies of which are attached to the original complaint herein and marked "Exhibit C;" neither John Lawler nor Ed. W. Wells had any knowledge or information that this prospectus had been or was being circulated in England or had any knowledge or notice of its contents until some time in the month of October, 1893.

17. That on May 15, 1892, at the Hillside mines, the defendants, Lawler and Wells caused to be delivered to Mr. T. A. Rickard, a report previously made upon said mines, known in the evidence as the Blauvelt report, together with a map of the underground workings of said mine as such workings then existed, known in the evidence as the Blauvelt map; also copies of the smelter and milling returns of ores which had been previously shipped from said mines and reduced, known in the evidence as smelters' returns; that on September 28, 1892, at the request of H. H. Warner, said John Lawler sent

by express to H. H. Warner at New York city, the originals of said smelter and milling returns.

18. That on August 27, 1892 defendant Wells visited the office of the Industrial & Mining Guaranty Company at 41 Broadway, New York city, and while there had an interview with H. H. Warner, president of that company and of the Seven Stars Gold Mining Company; that during that interview nothing was said to Mr. Wells about the plans of the Seven Stars Gold Mining Company or of the Industrial & Mining Guaranty Company or the issuance and
414 circulation of any prospectus.

19. That the section of the underground workings shown upon the map accompanying the prospectus and being one of the Exhibits "C" attached to the original complaint, is a copy of the Blauvelt map with the additions of the outline of the underground workings made by T. A. Rickard as the agent of Cowland during his administration and by the Industrial & Mining Guaranty Company during its operations of said property; that the original of the surface outlines of the mining claims and town site appearing upon said map "Exhibit C," was prepared by Alexander O. Brodie while in the employ of the Industrial & Mining Guaranty Company and without the knowledge of Lawler and Wells; that the original Brodie map contained the outlines of all the mining claims described in the escrow deed, "Exhibit B," together with other mining claims bonded by said Industrial & Mining Guaranty Company, and located by said Brodie for the benefit of the Seven Stars Gold Mining Company; that the said map, "Exhibit C" contains an outline of only those mining claims and town site mentioned in the resolution of the Industrial & Mining Guaranty Company, dated September 10, 1892 and referred to in finding 12 herein, together with the Boulder, a claim bonded from Joe Howell, and claims located by Mr. Brodie for the benefit of the Seven Stars Gold Mining Company; and, together with the Hillside patented claim mentioned in said escrow deed, Exhibit "B;" that defendant Lawler, on his
415 visit to New York, August 30th, 1892, saw the original Brodie map hanging on the wall of the office of said companies in New York; that the original Brodie map of which defendants' map, Exhibit "A" in evidence is a true copy, had endorsed thereon the words, to wit: "Plat of the Hillside and adjoining claims;" and, said quoted words were written upon the original draft of the distributed map, Exhibit "C," attached to the complaint; that at the request of some of the officers of the Industrial & Mining Guaranty Company, said quoted words were, before distribution, changed by the lithographers upon said distributed map, Exhibit "C," to the words, to wit: "Map of the group of mines belonging to the Seven Stars Gold Mining Company."

20. That on and between the 30th day of August, 1892, and the 3d day of September, 1892, the defendant, John Lawler was in the offices of the Industrial & Mining Guaranty Company in New York city and there became aware that an American prospectus was being prepared for circulation for the purpose of promoting the sale of the stock of the Seven Stars Gold Mining Company, and, that the

facts and statements contained in the Blauvelt report and map and copies of smelters' returns, hereinbefore mentioned, were being used as a basis of the description of the said Hillside group of mines to be contained in said proposed American prospectus.

21. That on October 28, 1892, said H. H. Warner was at
416 Prescott, Arizona, and there represented to John Lawler and Ed. W. Wells that he was unable to place securities which he held, without great sacrifice, in time to meet the payment of a portion of the purchase price falling due November 12, 1892; that relying upon said representations and upon the request of said H. H. Warner, the defendants John Lawler and Ed. W. Wells, under date of October 28, 1892, executed the instrument in writing attached to said answer and marked Exhibit "I."

22. That on May 8, 1893, H. H. Warner executed a general assignment of his property for the benefit of his creditors to Job E. Hedges.

23. That on May 11, 1893, the defendants Lawler and Wells, then knowing of the assignment in finding 22 set forth, and said Charles Cowland executed an instrument in writing, a true copy whereof is attached to said answer and marked Exhibit "K," wherein and whereby it was stipulated that the payment mentioned in the original escrow agreement, Exhibit "A" aforesaid, as falling due on May 12, 1893, may be made by said Cowland as follows: $9,098 in cash, $4,500 to be paid in cash to said Lawler and Wells at said Bank of Arizona on the first day of June, 1893, and a like sum on the first day of each of the following months, viz: July, August, September, October and November, 1893.

24. That a part of the consideration for the execution of the written instrument Exhibit "K" attached to said answer,
417 was the issuance and delivery to said defendants Lawler and Wells, of $50,000 par value of the guaranteed capital stock of the Seven Stars Gold Mining Company and of the appointment of John Lawler as manager of the operations of said Hillside group of mines.

25. That on May 11, 1893, the defendant, John Lawler was appointed by the Seven Stars Gold Mining Company, manager of the operations of said Hillside group of mines, and said defendant John Lawler, on May 13, 1893 entered upon his duties as such manager.

26. That on the 18th day of August, 1893 the chancery court of the State of New Jersey, in a certain action for that purpose then pending in said court, duly appointed defendant, John Griffin as receiver of the said Industrial & Mining Guaranty Company and of the Seven Stars Gold Mining Company, and thereupon, on that day the said John Griffin duly qualified and entered upon his duties as such receivers.

27. That the Seven Stars Gold Mining Company from and including October 1, 1892 until and including the 17th day of August, 1893, continuously occupied and operated the said Hillside group of mines under and by virtue of the occupation thereof so given to it, by the Industrial & Mining Guaranty Company as aforesaid,

with full knowledge and notice of the terms, conditions, privileges and provisions contained in the original escrow agreement, Exhibit "A" aforesaid.

418 28. That on September 1, 1893, or at any time since then, said Charles Cowland or the said receiver or the plaintiffs or any one for them has not and have not paid or offered to pay to said defendants John Lawler and Ed. W. Wells, the sum of $4,500 payable on that day under the terms and conditions of the written instrument, Exhibit "K" attached to said answer and said sum or any part thereof has not at any time since then been paid; and that said Cowland or any one for him has not paid, or caused to be paid, or offered to pay any portion of any of the purchase-money of said property falling due or payable on or after the first day of September, 1893 according to the terms of the original escrow agreement, Exhibit "A" or the amendments thereof.

29. That on the 10th day of September, 1893, the defendants John Lawler and Ed. W. Wells, as owners of the legal title to the said Hillside group of mines, and claiming to exercise their rights under the original escrow agreement, Exhibit "A" aforesaid, and the amendments, Exhibits "I" and "K" attached to said answer, entered into possession of said Hillside group of mines and from thenceforward to and until September 30, 1897, the day of the date of the appointment of the first receiver herein, continuously remained in the exclusive possession of said mines.

30. That on the 10th day of November, 1893, said Bank of Arizona as the escrow holder of said deed, Exhibit "B" afore-
419 said, at the request of defendants John Lawler and Ed. W. Wells, redelivered said deed, Exhibit "B" aforesaid, to the defendants, John Lawler and Ed. W. Wells.

31. That the defendants, John Lawler and Ed. W. Wells had no knowledge or notice of the execution by Charles Cowland to the Industrial & Mining Guaranty Company, of the written assignment, Exhibit "D," the conveyance, Exhibit "F," the written consent thereto of H. H. Warner, Exhibit "E" and the resolution of the Industrial & Mining Guaranty Company accepting said instruments, as mentioned and described in finding 9 herein, until after the commencement of this suit.

32. That defendants, John Lawler and Ed. W. Wells had no knowledge or notice of the adoption of the resolution of the Industrial & Mining Guaranty Company dated September 10, 1892, offering to sell a portion of the property in controversy with other property, to a company formed or to be formed and known as the Seven Stars Gold Mining Company and more particularly described in finding 12 herein, until after the commencement of this suit.

33. That on the 11th day of May, 1896 defendant John Lawler was by the board of directors of the Seven Stars Gold Mining Company appointed a director of said corporation to fill a vacancy then existing; that said Lawler never entered upon the duties of said office and had no knowledge or notice of said appointment
420 until long after the commencement of this action.

34. That defendants John Lawler and Ed. W. Wells in the

month of October, 1892, became aware that the American prospectus, Exhibit "D" to the original complaint, was being distributed by the Industrial & Mining Guaranty Company.

35. That the defendants John Lawler and Ed. W. Wells or either of them or any person in their or either of their behalf did not at any time protest against the preparation or circulation of the prospectuses, maps and applications for subscriptions to stock herein mentioned, and they did not at any time or at all attempt in any way to give any notice of their rights in the Hillside group of mines to any of the plaintiffs or purchasers of the stock of the Seven Stars Gold Mining Company, except as such notice might be imputed to the said plaintiffs and stock purchasers through and by virtue of the recorded title in said defendants, of the property in controversy, as in finding 1 herein set out.

36. That plaintiff, Clinton B. Wiser was a director of the Seven Stars Gold Mining Company, and his name appeared on the prospectus as such director and he assisted in the circulation of the American prospectus and in the sale of the stock of that corporation and during all of that time he had knowledge and notice that the title to the property in controversy was not vested in the Seven Stars Gold Mining Company.

421 37. That the Seven Stars Gold Mining Company duly authorized the Industrial & Mining Guaranty Company to act as its agent in the sale of stock, and all of the stock of the Seven Stars Gold Mining Company which was at any time sold under the American prospectus was so sold by the Industrial & Mining Guaranty Company and the latter received from the stock purchasers all the moneys which were paid on account of the purchase price of such stock.

38. That as to stock sold under the American prospectus to American stock purchasers, every contract of sale and purchase of stock of the Seven Stars Gold Mining Company was conducted by the Industrial & Mining Guaranty Company on the one part, as sellers, and by the individual subscriber to said stock as purchaser, on the other part; that as to stock sold under the English prospectus in England, every contract of sale and purchase of said stock was conducted by Tarbutt & Quentin on the one part as sellers, and by the individual subscribers to said stock as purchaser on the other part, and, that neither John Lawler nor Ed. W. Wells was present at, or a party to, any of said contracts.

39. That 21 out of a total aggregate numbering about 500 of the purchasers of stock of the Seven Stars Gold Mining Company have testified in this case, and, with the exception of witness Wiser, during all of the time of their and each of their (the said witnesses') dealings with the Industrial & Mining Guaranty Company in

422 the purchase, subscription and payment for such stock.

*a.* They each relied upon the statements contained in the prospectuses and maps as distributed, and they believed from the reading of the same that the Seven Stars Gold Mining Company owned the mines and properties therein mentioned and referred to;

*b.* All of the said witnesses including witness Wiser, and with the

exception of witness M. J. Riordan, did not then know either of the defendants John Lawler or Ed. W. Wells; and,

*c.* That said witnesses, including witnesses Wiser and Riordan, did not before, or at the time of their said purchases, subscriptions or payments, have any communication with said defendants or either of them concerning any matter in issue herein.

40. That the subscribers to the stock of the Seven Stars Gold Mining Company did not, at the time of their individual subscriptions to, or, at the time of their several payments for said stock, have any knowledge or notice of any of the following matters:—

(*a.*) That Lawler and Wells on May 12, 1892 knew that H. H. Warner proposed to form a corporation to operate said group of mines and eventually take the title thereto, as in finding 6 herein set forth;

(*b.*) That said defendants had furnished the Blauvelt report
423 and map, or the copies of and original smelters' returns as herein mentioned, or that the same was being or had been used as data for said prospectus, and the maps distributed therewith;

(*c.*) That John Lawler and Ed. W. Wells had visited the offices of the Industrial & Mining Guaranty Company, in New York, in August and September, 1892, or of any matter or thing occurring thereat; or,

(*d.*) That said defendants knew that said prospectuses and maps were being distributed.

41. That the subscribers to the capital stock of the Seven Stars Gold Mining Company in making their several subscriptions therefor, and payments thereon, did so, without any knowledge of, and without relying upon anything said or done or omitted to be said or done in the premises by the said Lawler and Wells or either of them.

42. That John Lawler and Ed. W. Wells did not before or at the time of any subscriptions to the capital stock of Seven Stars Gold Mining Company or payment on account of said subscriptions, make any representations to or communicate with, any subscriber of said stock concerning any matter or thing in issue herein.

43. That from the gross proceeds of the operations of the Hillside group of mines during its operations by the Industrial & Mining Guaranty Company, there was deposited in the Bank of Ari-
424 zona to the credit of Lawler and Wells on account of the purchase price of said property in accordance with the terms of said escrow agreement, Exhibit "A" aforesaid, the sum of $19,987.61; that during the operations of said properties by the Seven Stars Gold Mining Company, a like deposit was made for a like purpose, amounting to the sum of $47,812.25, aggregating in all, $67,799.86.

44. That on May 12 and 24, 1892 H. H. Warner paid to the defendants, Lawler and Wells, on account of the purchase price of said property, the aggregate sum of $51,000.00; that there was paid on and between November 12, 1892 and August 4, 1893 to the defendants, John Lawler and Ed. W. Wells on account of the purchase

price of said property under the terms of the original escrow agreement, Exhibit "A" aforesaid, and the amendments, "I" and "K" aforesaid, the aggregate sum of $112,339.96; and said sum was credited to Lawler and Wells on the books of the Bank of Arizona on the dates and in the amounts as follows, to wit:

| | |
|---|---|
| 11–12, '92, Bank of Arizona | $35,000 |
| 11–12, 1892, Park Nat. bank, N. Y. | 23,500 |
| Dec. 9, '92, Bank of Arizona | 7,000 |
| Dec. 9, 1892, Bank of Arizona | 12,500 |
| 12–9, 1892, Bank of Cal., S. F. | 12,500 |
| 12–9, 1892, Bank of Cal., S. F. | 4,500 |
| Feb. 11, 1893, Laidlaw & Co., N. Y. | 4,500 |
| Feb. 11, Bank of Arizona | 1,639.96 |
| June 5, 1893, Laidlaw & Co., N. Y. | 4,500 |
| June 5, '93, Laidlaw & Co., N. Y. | 2,200 |
| Aug. 4, 1893, Bank of Arizona | 4,500 |

45. That the payments of November 12 and December 9, 1892 and on February 11 and June 5, 1893 were made in the following manner, to wit: The treasurer of the Industrial & Mining Guaranty Company drew a check for each payment on its common fund in the Continental National Bank of New York, which said checks were payable as follows, to wit: "To the order of Charles Cowland or Laidlaw & Company" (or, "to the order of Charles Cowland or the Park national bank" as the case was,) "for telegraphic transfer to the Bank of California" (or, "the Bank of Arizona" as the case was) "for credit to Lawler and Wells on account of the Cowland contract," which said checks were collected by the payee and the moneys received therefrom, transmitted in the usual course of business to the Bank of Arizona and there placed to the credit of Lawler and Wells on account of the purchase price of said property, in accordance with the terms of the original escrow agreement, Exhibit "A" and the amendments thereof.

46. That during the life of the Industrial & Mining Guaranty Company it was engaged in promoting sundry mining, railroad and industrial enterprises including the business transactions of the Seven Stars Gold Mining Company; that during that time it received and disbursed the sum of $824,142.13; that from June 15, 1892 to and including August 1, 1893, all of the moneys which it received and disbursed on account of its various enterprises were deposited in its name, in a common fund in the Continental National Bank of New York, and checked against, disbursed and used by said Industrial & Mining Guaranty Company in its various business enterprises as such enterprises required, excepting the sum of $111,724.23, of which sum, $67,799.86 were the gross proceeds of ore mentioned in finding 43, and the further sum of $43,924.37, which was composed of $224.37, moneys received prior to May 11, 1893 from the sale of Seven Stars stock, and the remainder from loans obtained by said company, subsequent to May 11, 1893.

47. That the defendants John Lawler and Ed. W. Wells did not

at any time, prior to the time of the commencement of this action, have any knowledge or notice that any moneys received by them on account of the purchase price of the Hillside group of mines as provided for and mentioned in the original escrow agreement, Exhibit "A" aforesaid, came from or *was* the moneys or any part of the moneys which any one or more of the purchasers of the stock of the Seven Stars Gold Mining Company had paid in to the Industrial & Mining Guaranty Company on account of the purchase price of such stock.

48. That the defendants Lawler and Wells were not promoters of or in anywise interested in the creation or organization of the Industrial & Mining Guaranty Company or of the Seven Stars Gold Mining Company or in the issuance and sale of the capital stock of either of said companies or in the proceeds thereof.

49. No certificates of stock of the Seven Stars Gold Mining Company were ever issued on account of the stock subscrip-
427 tions made in England.

50. That after the 11th day of May, 1893, the Industrial & Mining Guaranty Company received the sum of $500 and no more, on account of the sale of Seven Stars stock.

51. That the amount of moneys received by the Industrial & Mining Guaranty Company from the purchasers of guaranteed stock of the Seven Stars Gold Mining Company, was as follows: From the American subscribers, $131,859.52; from the English subscribers, $125,852.33, aggregating $253,128.05, of which $819.08 was returned by the Industrial & Mining Guaranty Company to certain of the stock subscribers to said guaranty stock, and their stock subscriptions cancelled, making the aggregate of money retained by the Industrial & Mining Guaranty Company from the sale of guaranteed stock, $252,308.97. That there was received by the Industrial & Mining Guaranty Company, $2,583.80 from the sale by it of the common stock of the Seven Stars Gold Mining Company.

52. That on September 28, 1892 the Industrial & Mining Guaranty Company received its first moneys, amounting to $2100, from the sales of the guaranteed stock, and during its operations of said Hillside group of mines prior to September 28, 1892 it had paid out on account of the operating expenses of said property, the sum of $21,004.50.

53. The Seven Stars Gold Mining Company at its New York office did not keep any books of account of receipts and expendi-
428 tures of moneys, but all receipts and expenditures of moneys on account of the operations and expenditures of the Industrial & Mining Guaranty Company and the Seven Stars Gold Mining Company during their respective operations of the Hillside group of mines, were kept by the Industrial & Mining Guaranty Company in its own books of account.

54. That the Industrial & Mining Guaranty Company, between the 15th day of June, 1892 and the 18th day of September, 1893, paid out on account of the operating expenses, purchase of machinery, purchase price of the Hillside group of mines, dividends and other expenses, all connected with this enterprise, the aggre-

gate sum of $380,295.81, which amounted to $127,986.84 more than the amount of moneys received by the Industrial & Mining Guaranty Company from the sale of Seven Stars guaranteed stock, and $60,186.98 more than the aggregate amount of moneys received by the Industrial & Mining Guaranty Company from the sale of Seven Stars guaranteed stock, and from the net proceeds of ore from the Hillside group of mines paid into the Bank of Arizona on account of the purchase price of said mines.

55. That during the operations of the Hillside group of mines by the Seven Stars Gold Mining Company, there was expended by the Industrial & Mining Guaranty Company for costs of operations, improvements, supplies and machinery, the sum of $112,411.82.

429 56. That the amount paid on account of machinery purchased and placed upon the Hillside group of mines by the Industrial & Mining Guaranty Company during the operations of the Seven Stars Gold Mining Company was the sum of $12,528.87, of which, machinery to the value of $5000 was sold under judicial sale by creditors of the Seven Stars Gold Mining Company after June 1, 1893.

57. That on and between January 18, 1893 and May 10, 1893 the Industrial & Mining Guaranty Company paid out as and for dividends on stock sold of the Seven Stars Gold Mining Company, the sum of $11,533.07 to the then various holders of the capital stock of the Seven Stars Gold Mining Company.

58. That the stockholders nor any one of them did not, before the commencement of this suit, return or offer to return to the Seven Stars Gold Mining Company, his stock or any part thereof; and, said stockholders nor any one of them did not, prior to the commencement of this action, return or offer to return his or their *pro*tion of the dividends received by him or them, from the Industrial & Mining Guaranty Company.

59. That there never was any meeting duly called and held of the stockholders of said Seven Stars Gold Mining Company; that on April 4, 1892 several stockholders representing themselves and about 300 other stockholders, voluntarily met at Jersey City, New Jersey, and there made demand upon John Griffin, re-

430 ceiver as aforesaid, to commence this suit, and he refused so to do.

60. That on and between September 10, 1893, and September 30, 1897, John Lawler and Ed. W. Wells received from the operations of said Hillside group of mines, the sum of $37,376.86 and disbursed in such operations during that time, the sum of $35,658.93.

61. That between the 17th day of November, 1893 and the time of commencing this action, the plaintiffs or said receiver, or any one for them, or either of them, did not make any demand upon said John Lawler and Ed. W. Wells or either of them, for the possession of the properties in controversy herein, or any part thereof.

*Conclusions of Law.*

1. That the execution, and deposit in the Bank of Arizona, of the escrow agreement, Exhibit "A," and deed, Exhibit "B," did not convey to Charles Cowland, his heirs or assigns or to Charles Cowland, or his agent, any estate in the property described in said deed, "Exhibit B."

2. That the execution and delivery by Charles Cowland to the Industrial & Mining Guaranty Company of the written assignment, Exhibit "D" attached to the said answer, and the deed of conveyance Exhibit "F" attached to the answer, had the force and effect of an assignment only, of all his right, title and interest in the escrow agreement, Exhibit "A" aforesaid and did not convey any
431 estate in the property in controversy to the Industrial & Mining Guaranty Company.

3. That the occupation of the Hillside group of mines by the Industrial & Mining Guaranty Company, and, by the Seven Stars Gold Mining Company was in privity with T. A. Rickard under the occupation given to him by Lawler and Wells, on April 13, 1892, under the escrow agreement Exhibit "A" aforesaid.

4. That the defendants, Lawler and Wells, were not promoters of or in anywise interested in the creation or organization of the Industrial & Mining Guaranty Company or of the Seven Stars Gold Mining Company or in the issuance and sale of the capital stock of either of said companies or in the proceeds thereof.

5. That there were no contractual relations between Lawler and Wells, or either of them, and any, either, or all, of the purchasers of capital stock of the Seven Stars Gold Mining Company.

6. That no fiduciary relations ever existed between John Lawler and Ed. W. Wells, or either of them, and any one, more, or all of the purchasers of shares of stock in the Seven Stars Gold Mining Company.

7. That no duty was at any time imposed upon John Lawler and Ed. W. Wells,

To prevent or attempt to prevent the circulation and dis-
432 tribution of the prospectuses, maps and blank applications mentioned in the findings, or,

To prevent or attempt to prevent the sales of any shares of stock of the Seven Stars Gold Mining Company; or

To inform the subscribers or proposed subscribers to said stock that they, said Lawler and Wells, were the owners of the legal title to the property in controversy nor any part thereof.

8. That the purchasers of the capital stock of the Seven Stars Gold Mining Company were not authorized from reading the prospectuses, maps and blank applications distributed, to so construe the same as to believe or conclude therefrom that the legal title to the properties mentioned therein, was vested in the Seven Stars Gold Mining Company.

9. That by the failure of Charles Cowland or any one claiming under him, to make, or cause to be made, the payment of $4,500

falling due September 1, 1893, on account of the purchase price of the property described in said deed, Exhibit "B" aforesaid, under the terms and conditions contained in the original of said escrow agreement, Exhibit "A" and the amendments thereto, Exhibits "J" and "K" aforesaid, the said Cowland and those claiming under him failed and neglected to exercise the right to perform a material condition of said escrow agreement and amendments thereto aforesaid, and thereby the said escrow agreement and the amendments
433 thereto aforesaid, became ended and determined and of no further force and effect; that immediately thereupon, defendants Lawler and Wells as legal owners of said property became at once entitled to the sole possession and occupation of said property; and, further, all of the moneys theretofore paid to said Lawler and Wells on account of the purchase price of said property, thereby became and is forfeited to, and was and is, the property of John Lawler and Ed. W. Wells, and they were and are entitled to retain the moneys so paid as liquidated damages for the failure on the part of the said Cowland, or those claiming under him, to comply with the terms and conditions of said escrow agreement and the amendments thereto aforesaid.

10. That the facts proven do not charge John Lawler and Ed. W. Wells or either of them, with actual or constructive fraud.

11. That John Lawler and Ed. W. Wells or either of them are not estopped from asserting herein, a forfeiture of the escrow agreement, Exhibit "A" aforesaid, and the amendments thereto aforesaid, and their legal title to, and the right of sole and exclusive occupation of the property in controversy and every part thereof.

12. That the facts proven are not sufficient to charge said property or any part thereof, with a trust, or fasten a lien thereon in favor of the plaintiffs, or any of them and those persons, or
434 any of them who are alleged to be in like estate with the plaintiffs for or on account of moneys, or any part thereof, alleged to have been paid as the purchase price of shares of the capital stock of the Seven Stars Gold Mining Company.

14. That the facts proven are not sufficient in law to charge said property or any part thereof with a trust, or fasten a lien thereon in favor of the plaintiffs or any of them and those persons, or any of them who are alleged to be in like estate with the plaintiffs for or on account of any moneys, or part thereof, paid, laid out or expended by or on behalf of the Seven Stars Gold Mining Company in the management, operation, improvement or the purchase price of the said property or any part thereof.

15. That the facts proven are not sufficient to constitute a cause of action against the defendants John Lawler and Ed. W. Wells, or either of them, or against the property in controversy, or any part thereof.

16. That a decree be entered herein, dismissing the complaint and likewise the cross-bill herein out of this court; that the defendants, John Lawler and Ed. W. Wells recover their costs from the plaintiffs herein, that the defendants, The Industrial & Mining Guaranty Company and the Seven Stars Gold Mining Company and John

Griffin as receiver of said company, go hence without costs. That a decree be entered accordingly.

WEBSTER STREET, *Judge.*

435 (Endorsed:) No. 2365. Clinton B. Wiser, *et al.* pl'fs *vs.* John Lawler, *et al.* d'f'ts. Findings of fact and conclusions of law. Copy rec'd Nov. 5, 1898, T. W. Johnston, att'y for plaintiffs. Filed at — o'clock — M. Nov. 1, 1898, J. M. Watts, clerk.

436 *Findings of Fact Proposed by Plaintiff in Wiser vs. Lawler & Wells, Nov.* 1, 1898.

First.

That shortly prior to the 12th day of May, 1892, H. H. Warner accompanied by one Rickard, visited Prescott, Arizona and entered into negotiations with the defendants Lawler and Wells in regard to the purchase of a certain group of mines situated in the Eureka mining district, county of Yavapai, Arizona; and known as the "Hillside mines."

And which were owned by, and in the possession of, the defendants Lawler and Wells; that said Lawler owned three-fourths and said Wells one-fourth of said mines, and title thereto duly appeared of record in Yavapai county, in said Lawler and Wells; that, as a result of these negotiations said Warner and Rickard visited said mines in company with said Lawler, for the purpose of examining them, and ascertaining their value. That as a result of such examination and investigation, said parties returned to Prescott, and there after further negotiation, in which said defendant Wells also participated, said parties made and entered into an agreement wherein and whereby said Lawler and Wells agreed to sell said Warner said group of mines, together with all appurtenances for the sum of four hundred and fifty thousand dollars, and on the said 12th day of May, 1892, said Lawler and Wells duly signed a

437 certain deed in writing wherein and whereby they purported to convey to one Charles Cowland said group of mines and mining claims, all of which are fully described in the complaint herein; which said deed contained the usual covenants of title and warranty, and was signed by the wife of said Wells, and which said deed, together with an agreement known as an "escrow agreement" and which was signed by said defendants simultaneously with said deed, were deposited in the Bank of Arizona in the city of Prescott, where they remained until they were delivered to said defendants by said bank at the time and under the circumstances hereinafter set out, which said escrow agreement and deed are in the words and figures of the exhibits thereof attached to answer of defendants. That said escrow agreement and deed were never recorded.

Second.

That while said Cowland was named as grantee, in said deed, and was the one directly obligated by the escrow agreement, to make

the payments therein provided for, said Cowland was in truth and in fact, simply the agent of said Warner, and it was so understood by all the parties to the transaction, and in furtherance of that understanding, said Warner made the only payment made to the defendants at the time of the execution of said deed and agreement above referred to, and in addition thereto guaranteed to Lawler and Wells Cowland's performance of said contract, which guar-
438 anty was in the words and figures following, to wit:

Whereas Charles Cowland of Denver, Colorado, has this day entered into an agreement with John Lawler and Ed. W. Wells of Prescott, Arizona, concerning the purchase of the "Hillside" group of mines and certain other property in Yavapai county, Arizona, at the price and sum of four hundred and fifty thousand dollars; and

Whereas the said Lawler and Wells have placed in the bank of Arizona in escrow, a deed conveying said property to said Cowland, which said deed is to be held and delivered by said bank, subject to the terms and conditions of said contract and agreement between said Lawler and Wells and said Cowland:

Now therefore in consideration of the premises and of the sum of one dollar in hand paid to H. H. Warner, of Rochester, N. Y., by the said Lawler and Wells, he, the said H. H. Warner does hereby guarantee that the said Charles Cowland will faithfully carry out and perform the conditions of said contract on his part.

It being distinctly understood and agreed however, that the said H. H. Warner does not bind himself any further than the said Cowland himself is bound by the terms of said contract, and *if* the said Warner is not bound to do or perform, nor does he guarantee that the said Cowland will do or perform any other or further thing than he is bound to do under the terms and conditions of said contract.

439 In witness whereof the said Warner has hereunto set his hand and seal this twelfth day of May, 1892.

H. H. WARNER. [SEAL.]

Attest:

J. C. HERNDON.

A. J. HERNDON, JR.

Third.

That at the time of entering into negotiations for the purchase of this group of mines, Warner was supposed to be a man of large means and amply able to purchase and pay for said mines, and he so represented himself to Lawler and Wells and was so represented by Rickard. The first proposition was that Warner should take the mines and pay the sum of four hundred and fifty thousand ($450,000.00) dollars therefor in cash; but after they had visited the mines and returned to Prescott to close the negotiations Warner stated to Lawler and Wells that he would pay only fifty thousand ($50,000.00) dollars in cash and the balance in deferred payments, and that he would proceed at once to organize a corporation to take

the title to the mines and would place the stock of said company upon the market for general sale or subscription both in America and England and that he would "work it for all there was in it."

440 Fourth.

That shortly after the execution and delivery of said deed and contract of May 12th, 1892, and in accordance with the terms and conditions thereof, said Lawler, for and on behalf of himself and Wells, did deliver to said Warner or his duly authorized agent, the possession of all of said mines and mining property together with the appurtenances thereto, all as described and referred to in said deed and said contract of May 12th, 1892, and Lawler and Wells never interferred with said possession in any way until September 1893, as hereinafter found.

Fifth.

That at the time of executing said deed and contract, said Warner paid to said defendants the sum of twenty thousand dollars and on 24th day of May, 1892, the further sum of thirty-one thousand dollars, or thereabouts, which was all the payments Warner made thereon.

Sixth.

That on the 15th day of June, A. D. 1892, said Warner organized or caused to be organized under the laws of the State of New Jersey, a corporation known as the Industrial Mining and Guaranty Company, the exact nature and purpose for which this company was organized does not appear, except as disclosed by its charter, and the manner in which it dealt with this property and the
441 other defendants herein. To this corporation said Cowland did, shortly after its organization, make, execute and deliver a contract and deed to the guaranty company in the words and figures as set forth in exhibits thereof attached to answer of defendants.

That immediately thereafter said Industrial Mining & Guaranty Company went into possession of all of said mines, mining properties and appurtenances, and continues in the open and notorious and apparently exclusive possession thereof, using, occupying, working and operating the same until on or about the 17th day of September, 1892.

That on the ninth day of August, 1892, said Warner organized or caused to be organized, under the laws of the State of New Jersey, a corporation known as the Seven Stars Gold Mining Company, with a capital stock of three million dollars, divided into six hundred thousand shares at five dollars each, and that shortly thereafter said Warner and his associates caused the said Industrial Company and said Seven Stars Gold Mining Company to enter into an arrangement whereby the former agreed to convey the aforesaid mines and mining properties and appurtenances to the latter free and clear of any and all incumbrances, which arrangement was in the form of a resolution, passed by the board of directors of the guaranty company, in the words and figures following, to wit:

"Be it resolved, That the Industrial & Mining Guaranty Co. sell and convey all their right, title and interest in the
442 Seven Stars, 'Happy Jack,' 'Contact No. 1' and 'Contact No. 2' mines; also in the claim known as Camp and in the locations known as the Mescal, Elwood, Midnight, Waterfall and Boulder, and all their right, title and interest to the 180 acres of land at Camp Wood, including town site and water rights, to a company formed or to be formed, and known as the Seven Stars Gold Mining Co., upon said company showing that it has placed two hundred thousand dollars ($200,000) for working capital and upon receiving two million eight hundred thousand dollars ($2,800,000) in cash or stock of the said Seven Stars Gold Mining Co. This company do hereby authorize, instruct and empower the officers of the Industrial & Mining Guaranty Co. to sign the necessary contracts and to deliver deeds of the same upon compliance with above conditions."

That upon the making of this arrangement and about the 17th day of September, 1892, said Industrial Company delivered to said Seven Stars Company the possession of all the mines and mining properties heretofore referred to and described in said deed and contract of May 12th, 1892, being the same property that Lawler and Wells had delivered to Industrial Company; that thereupon, said Seven Stars Company entered into possession of all and singular the said mines and mining properties, and all the appurtenances thereto; and thereafter remained in such possession and in its name and as the apparent owner of said property, used and occu-
443 pied the same and worked the said mines and the mill situated thereon and expended large sums of money in payment for new and additional machinery and appliances, for use and necessary for use in the operation thereof, and in the payment for labor and supplies necessary in the use, operation and development of said mines; that said Seven Stars Company kept books of account in its own name in which books were entered its transactions in and about the conduct of said mines and mining properties, the purchase of supplies and material, sale of ore, etc.; and said Seven Stars company acted in all such matters with the full knowledge, acquiescence and consent of said Lawler and Wells, until finally dispossessed by said Lawler in the manner and under the circumstances and conditions hereinafter set out.

Seventh.

That on or about the time of the organization of the said Seven Stars Gold Mining Company, said Warner undertook the preparation of an elaborate prospectus of the said Seven Stars Gold Mining Company, which he intended to circulate by mail and otherwise throughout the United States of America and one of similar nature for circulation throughout Great Britain, and still another which had been translated in the French language, all of which prospectuses were to be circulated for the purpose of inducing the public to purchase stock in the said Seven Stars Gold Mining Company; that at the same time he prepared

a map of the said mining properties to accompany said
444 prospectuses, upon which map was written: "Map of the group of mines belonging to the Seven Stars Gold Mining Company," and at the same time he also prepared a blank subscription for stock in said company, which subscription, among other things, provided: "I agree to accept said shares, or any smaller number you may allot me, upon the terms and conditions of the prospectus;" that during the latter part of September and during the months of October and November 300,000 of these prospectuses, maps and blank applications for stock were together circulated throughout the United States by mail and verbatim copies of the prospectuses were printed in the leading newspapers throughout the country; that eighty thousand copies of the English prospectus accompanied by eighty thousand maps and blank applications for stock were circulated at the same time throughout Great Britain; the French prospectus was never sent out; that copies of the said American prospectus, said map and blank applications for stock were received in the course of such distribution by the plaintiffs residing in the United States, and copies of the said English prospectuses, maps and blank applications were received by such of the plaintiffs as reside in Great Britain, and thereon and within a reasonable time thereafter all of plaintiffs purchased stock in said company as hereinafter shown.

That the main points of the distribution of the said pro-
445 spectuses were London, New York, Boston, Chicago and St. Louis, and at Prescott, Arizona; that the plaintiffs reside in various points in the United States and England, and the plaintiff Reardon at Flagstaff, Arizona.

## Eighth.

That the said American prospectus, English prospectus and said map and blank applications are correctly set forth as exhibits to the original complaint.

## Ninth.

That during the time that these prospectuses were in the course of preparation in the office of the Seven Stars Gold Mining Company at # 41 Broadway, New York city, and while the same were engrossing the entire attention of the force in the said office, the said defendant Wells visited said office and had an interview with Warner in one of the rooms of the same, but Wells testifies that during that interview the Seven Stars Gold Mining Company or its plans, or its prospectus, were not mentioned, and there is no other testimony as to the nature of this interview; that during the time that these prospectuses were in course of preparation in the office of the Seven Stars Gold Mining Company as aforesaid, the defendant Lawler was in New York for five days or more; he arrived August 30th, 1892; that Lawler while in New York was the guest of Mr. Warner, president of the Seven Stars Gold Mining Company; that while in New York Lawler spent a large part of every day in

the office of the company and was with Warner and the per-
446 sons in his employ and in the employ of the company during most of his visit; that Lawler was consulted freely by Warner and the men who worked for Warner and the clerks and officers of the Seven Stars Company in regard to the statements in the prospectus then being completed; that Lawler knew the prospectuses were being prepared, and made suggestions in regard to them, and the completed prospectuses in the proof-sheets were read over to Lawler in the office of the Seven Stars Company and he stated he was well pleased with them; that Lawler also saw the completed maps made to accompany the prospectus; that Warner at this time requested of Lawler the original smelters' certificates held by Lawler, which Warner stated he desired to have before he let the prospectuses go out, and Lawler then promised to send the same and did so upon his return to Prescott about September 28th, 1892; that Lawler learned while in New York that 300,000 copies of the prospectuses and maps were to be circulated, and that Warner was proceeding as rapidly as possible to get them out in order to meet the payments coming due on the mine; that Lawler and Wells furnished milling receipts and ore receipts and descriptive data used in the prospectus, also furnished tabulated statements on the back of prospectus, also furnished map of property used as basis of lithographed map, and also furnished the Baluvelt report quoted in the prospectus, Lawler and Wells knowing the use that was to be made of such matters; that at the request
447 of Lawler fifty copies of the American prospectus was sent to him at Prescott, Arizona; that the defendant Wells received a copy of the American prospectus in the course of its distribution; that the prospectus was distributed in Prescott, Arizona, and at Hillside, to the knowledge of Lawler and Wells; that Lawler had a copy of the prospectus in his possession in October, 1892, and also saw a verbatim copy in the New York Herald; that Rickard, who was present at the negotiation of the Cowland contract, had frequent conversations thereafter with Lawler and Wells in which he discussed with them the steps Warner was taking to float the mine in New York and London; that about October 1st, 1892, Lawler read in a local paper at Prescott a criticism of Warner's scheme to float the property, and also a criticism in the New York Herald, and also read in the Engineering and Mining Journal of September, 1892, an article criticising Warner's methods in floating the property.

That copies of the American prospectus were sent to the Bank of Arizona, of which the defendant Wells was formerly the vice-president and director, and in which at this time he was a large stockholder and in the offices of which he had his desk, said copies being sent upon the following correspondence:

"PRESCOTT, ARIZONA, *Oct.* 11, '92.

" W. M. Earl, Esq., treas., # 41 Broadway, N. Y.

DEAR SIR: We acknowledge receipt of your telegram of
448 the 10th inst. advising us of the fact that you had mailed us check for $5,000.

We are paying all Hillside checks upon presentation, but have said nothing to Mr. Rickard about the guarantee you gave us.

If he seems solicitous about the account this will explain.

Will you kindly send us a few of the prospectuses of the Seven Stars Mining Co.

Yours very truly, W. E. HAZELTINE, *Cashier*."

Hazeltine was the cashier of the Bank of Arizona mentioned in the agreements hereinbefore set out.

Earl, the treasurer of the Industrial Co. in reply, wrote:

"With regard to your request for a few prospectuses of the Seven Stars Gold Mining Company, we expect some ad-itional copies from the company within two or three days, when we will take pleasure in forwarding the same to you."

On July 25th, 1893, Lawler wrote Kennard, as follows:

"Mr. Sutherland, who was connected with the firm of Frazer & Chalmers in Chicago up to January last and who, as you may remember, made very favorable mention of the Seven Stars mine to those whom he knew as desirous of investing in its stock is
449 now in town, and tells me that he still feels very partial to the Hillside group."

On June 12, 1893, Lawler wrote to one of the officers of the company: "Regarding the state of affairs of May 12, last, the public had lost confidence here in the credit and standing of the company from the manner in which the property had been handled and managed in the past year."

## Tenth.

That upon the American prospectus there was sold to various persons in the United States—plaintiffs in this suit and others in like estate—stock in the Seven Stars Gold Mining Company, for which the purchasers paid in cash the sum of $131,859.52; and upon the English prospectus there was sold to various persons in England——plaintiffs and others in like estate—stock in the Seven Stars Gold Mining Company, for which the purchasers paid in cash the sum of $125,852.33; that all of such purchasers were induced to buy stock solely by the representations in the prospectuses and maps; that the twenty-one of the said purchasers who have testified in this suit say that they received copies of prospectus during October 1892, and that — believed from examining the prospectuses and maps that the Seven Stars Gold Mining Company owned the mines and mining properties in controversy and that no other person or company had any interest of any kind therein, and that they would not have purchased stock in the company if such was not their belief; that none of the plaintiffs or other
450 stock purchasers had any knowledge that the Seven Stars Gold Mining Company was not the owner of the mines and was not receiving the entire proceeds of their operation, and *that* no knowledge that Lawler and Wells had any right, title or interest in the said mines or in the proceeds of their operation; that the said defendants Lawler and Wells, or either of them, or any person on their behalf, never protested against the preparation or circulation

of the said prospectuses and maps, or the general sale of stock therein, or any act of Warner in the matter, and never attempted in any way to give any notice of their rights or interests in the properties or their output to any of plaintiffs, or other stock purchasers, or persons dealing with the company, or by any public announcement of any kind.

That the American prospectus appeared under flaring headlines upon the front pages of the New York Herald, on October 1st, 1892, and this general advertisement, together with the extensive circulation of the prospectuses, created considerable talk throughout the financial centers of the United States and England; and especially at Prescott, Arizona, a mining center, the home of the defendants Lawler and Wells, the organization of the company, the operation of the mines in its name, the circulation of the prospectus, and the general subscription for stock, became common knowledge among persons interested in mining matters.

451 Lawler, in answer to a question on cross-examination, said in regard to the circulation of the prospectus, I knew "what news was running all over the country."

That plaintiff Clinton B. Wiser, was elected a director of the Seven Stars Gold Mining Company, and his name appeared on the prospectuses as such director and he assisted in the circulation of the prospectus and the sale of stock thereon in Chicago, Illinois, but said Wiser was not informed that the company did not own the mines, and he believed from reading the prospectus and examining the map that it was the owner and upon that belief invested largely in the stock of the company, and had no knowledge that the company did not own the property until about May 13th, 1893.

## Eleventh.

That the Industrial Mining & Guaranty Company controlled by Warner, was the agent of the Seven Stars Gold Mining Company to promote the sale of the latter's company stock, and was organized by Warner for this and similar purposes; that as such agent the Industrial Company issued the prospectus and circulated it, sold the stock and received all the proceeds of such sales, and used such proceeds in the manner here shown; that the said sum of $253,893.77 paid by the plaintiffs and others in like estate for the stock of the Seven Stars Company was sent, in accordance with the prospectus, to the treasurer of the Industrial Company; that the Industrial Company was at

452 the same time promoter and owner of various enterprises and was constantly receiving sums of money from sources other than the sale of Seven Stars stock; that it kept one bank account into which it deposited its receipts from every source; that since its organization in June, 1892, and during the succeeding year, it transacted a business aggregating about $817,000.00; that in this one bank account it placed all of the said sum of $254,893.77, received from the sale of stock, and from this bank account during the same period it paid the entire cost of the operation and development of the said mines and for supplies and additional machinery while the

same were being operated in the name and for the Seven Stars Company, such expenditures in that matter aggregating $141,916.32 ($32,500 of which was paid out of the money raised by Miller, Chase and Wiser) and by checks or drafts on the same bank account it paid on behalf of the Seven Stars Company to Lawler and Wells on account of the purchase price of the mines the sum of $112,339.86, which said sum was received by Lawler and Wells with full knowledge and notice that it was paid by the Industrial Company as the agent and promoter of the Seven Stars Company and was raised by the sale of the stock of the Seven Stars Company; that during the precise period in which the expenditures and payments aforesaid were made, the Industrial Company received from the sale of stock and placed in the said bank account more than sufficient to meet all such expenditures and pay-
453 ments, and it was to the sale of stock that the Industrial Company constantly looked for the purpose of securing the money to make such expenditures and payments; that from May 12th, 1892, until September, 1893, the time of the assertion of adverse possession by Lawler, the defendants Lawler and Wells derived from the sale of ore and bullion taken from the mines the sum of $67,799.86; that during this period Lawler and Wells paid nothing towards the expense of operation or development, and while the Seven Stars was in possession Lawler and Wells had full knowledge that the expenses of operation and development were being met by the Industrial Company as the agent and promoter of the Seven Stars Company out of the receipts from the sale of stock placed in the said general bank account as aforesaid; that the Seven Stars Company had no other property other than the said mines and no other source of income other than the sale of its stock and the operation of the mines; that all the payments and moneys coming to Lawler and Wells have been retained by them; that the said $112,339.86 was sent to the Bank of Arizona as the agent of Lawler and Wells, and paid by said bank, to them, at the dates and in the amounts as follows:

| | |
|---|---|
| Oct. 12th, 1892 | $35,000 |
| Oct. 12th, 1892 | 23,500 |
| Dec. 9th, 1892 | 7,000 |
| Dec. 9th, 1892 | 12,500 |
| Dec. 9th, 1892 | 12,500 |
| Dec. 9th, 1892 | 4,500 |
| 454 Feb. 11th, 1893 | 4,500 |
| Feb. 11th, 1893 | 1,639.96 |
| June 5th, 1893 | 4,500 |
| June 5th, 1893 | 2,200 |
| Aug. 4th, 1893 | 4,500 |

Twelfth.

That prior to the 28th day of October, 1892, the said Warner visited Prescott for the purpose of obtaining an extension of the payments under the Cowland agreement, and after some negotiations

and on October 28th, 1892, he obtained an agreement for an extension in the words and figures as follows:

Whereas under that certain agreement entered into between John Lawler, Ed. W. Wells and Charles Cowland, dated May 12th, 1892, regarding the sale of the Hillside group of mining claims, situate in Eureka mining district in the county of Yavapai, and Territory of Arizona, to said Cowland to which agreement reference is hereby made, the sum of one hundred and twenty-five thousand dollars and interest thereon from the 12th day of May, 1892, at the rate of ten per cent. per annum became due and payable to said Lawler and Wells.

It is therefore hereby agreed by said Lawler and Wells that the said Cowland may have to and until December, 12, 1892 to pay all of said principal and interest over and above the sum of $93,5000. Said Lawler and Wells hereby extending the time to the 12th day of December, 1892, for the payment of the balance of said principal and interest, after the said Cowland pays said amount of
455 $93,5000 and only in case said Cowland pays said amount of $93,5000 on said 12th day of December, 1892, shall said extension take effect.

It is understood however, that by extending the time of payment aforesaid no rights, privileges or advantages are lost or gained by either said Lawler and Wells or Cowland by reason thereof or that the terms or conditions of said agreement shall in any manner be altered, changed or affected by said extension, and that said balance shall be considered due and payable on said 12th day of November, 1892, and in case of failure to pay said balance as aforesaid, said Lawler and Wells reserve and shall have the same rights and advantages as if said extension had not been made.

It is also understood and agreed that the payment of $25,000 which was carried over under and by said agreement from the time of the first payment thereunder to the 21st day of May, 1893, shall be paid by said Cowland, with the interest thereon, to said Lawler on the 13th day of February, 1893.

JOHN LAWLER.
ED. W. WELLS.

October 28, 1892.

456 That on the 31st day of October, 1892, another agreement in regard to payments was made in the words and figures as follows:

We the undersigned agree that the payment of money coming due us and each of us from Charles Cowland on the twelfth day of November, 1892, under and in pursuance of that certain agreement made by and between us and the said Cowland on the 12th day of May, 1892, regarding the sale by us to him of the Hillside group of mining claims situate in Eureka mining district, in the county of Yavapai, Arizona.

And also all money coming due and to be paid to us and each of us in pursuance of that agreement made by us on the 28th day of Oc-

tober, 1892, extending and fixing the time in which to pay portions of the purchase-money of said mining claims, may be made by the said Cowland to the Bank of Arizona, at Prescott, Arizona, and we hereby modify the said agreements so far as to authorize the said Cowland to pay the whole amount of said money due and owing under said agreement into said bank to the credit of Lawler and Wells in place of making the same payable at the Park national bank at New York and the Bank of California at San Francisco, California.

And we hereby agree to receive such payment at said Bank of Arizona, as a performance by said Cowland of so much of the conditions of payment contained in said agreements.

No other changes or modifications shall be regarded as
457 being made in said agreements, the only purpose of this memorandum being to change the place of said payments.

Prescott, Oct. 31st, 1892.

JOHN LAWLER.
ED. W. WELLS.

That at the time of said extension of October 28th, 1892, the said Lawler and Wells had actual knowledge that the said Warner himself had no desire or intention of making any further payment on the contract of May 12th, 1892, and was either obliged or intended to look to the receipts from the sale of said stock and from the ore and bullion derived from the operation of said property to make the future payments.

That the payments for stock made by plaintiffs and other- in like estate were made at various dates and in various amounts between October 1st, 1892, and July 1st, 1893; that up to October 28th, 1892, there had been paid in on such payments twenty per cent. of the $254,893.77; that after May 13th, 1893, about $20,000 of said amount was paid in by plaintiffs and others in like estate.

Thirteenth.

That on or about the 8th day of May, 1893, said Warner being insolvent, made an assignment for the benefit of his creditors to one Hedges; that thereafter, through negotiations carried on
458 partly before that date, through said Hedges, with defendant Wells in Prescott, and Lawler in Chicago, and partly thereafter by Warner himself, an agreement was made and entered into with Lawler and Wells, for an extension of time for certain payments on said Cowland agreement, that as a result of these negotiations, an agreement for an extension was entered into, in which, among other things, it was provided that certain debts for merchandise and supplies of the Seven Stars Gold Mining Co. which were then pressing, and which were liable to involve these properties, and which amounted to about $40,000 *dollars*, should be paid and discharged; that Lawler should be made superintendent of and for said Seven Stars Gold Mining Co., and that Lawler and Wells should have as a consideration $50,000 of the guaranteed capital stock of the Seven

Stars Gold Mining Co., all of which was acceded to by Warner, which agreement was in words and figures following, to wit:

The agreement or escrow dated May 12th, 1892, between John Lawler, Ed. W. Wells, and Charles Cowland and deposited with the Bank of Arizona at Prescott, Arizona, and attached hereto is hereby changed and modified as follows:

1. The payment mentioned in said agreement to be made on the 12th day of May, 1892, may be made by said Cowland as follows:

Nine thousand and ninety-eight dollars in cash which now stands deposited in said Lawler and Wells at the Bank of Arizona,
459 four thousand five hundred dollars to be paid in cash to said Lawler and Wells at said Bank of Arizona, on the 1st day of June, 1893, and a like sum on the first day of each of the following months, viz: July, August, September, October, and November, 1893. And the further sum of one hundred thousand dollars and the interest due and unpaid on said 12th day of November, 1893.

2. The payment of $125,000 and interest known as the fourth payment mentioned in said escrow may be made in three equal payments after the 12th day of November, 1893, the said payments may be made two months apart next after and following said 12th day of November, 1893. This extension of time in which to make the 3rd and 4th payments mentioned in said escrow is made in consideration of the payment and delivery to said Lawler and Wells of fifty thousand dollars of the guaranteed capital stock of the Seven Stars Gold Mining Company, and other valuable consideration.

It is understood and agreed that none of the terms or conditions of the said escrow are to be changed, abridged or modified in any particular, excepting so far only as to extend the time of payment of the 3rd and 4th payments of said escrow as above stated, and the said payments hereinbefore specified are to be made at the times, and manner stated. And in default of the delivery and payment of said stock as aforesaid at the making and deposit of this agreement with said escrow, or in default of making either or any, or any
460 part thereof of said payments as above stated, said Lawler and Wells shall have and exercise the same rights and privileges in every particular, which they now have under said escrow or agreement, as if such extension of time of payment on this agreement had not been made.

And the stock so delivered or paid to the said Lawler and Wells and all sums of money therefore paid to or from them, under and in pursuance of said escrow, and this agreement is, and shall be their property, and held by them and forfeited by said Cowland or the party having the same, as liquidated damages for the failure of said Cowland to carry out the payments, and conditions hereinbefore stated, and agreed to.

All ores mined or taken from the property mentioned in said escrow and the proceeds thereof shall continue to belong to said Lawler and Wells, and said proceeds shall be applied to the pay-

ment in the amounts hereinbefore stated which said payments shall cease to draw interest when made.

ED. W. WELLS.
JOHN LAWLER.
CHARLES COWLAND.

Fourteenth.

Defendant Lawler accepted the appointment as superintendent of the said Seven Stars Gold Mining Company on May 13th, 1893, and assumed the duties of such superintendency and acted as
461 such superintendent on behalf of the company until September 1893, with full knowledge and notice of all that Warner had done in the organization of the Seven Stars Gold Mining Company and sale of its stock; and also with full knowledge and notice that the said Seven Stars Gold Mining Company was then and had been in the possession of said mines and mining properties and was operating the same, and was purchasing supplies and machinery in its own name and was operating said property in its own name and as the apparent owner; and likewise with the same knowledge Lawler and Wells on May 12th, 1893, accepted $50,000 of the stock of said Seven Stars Gold Mining Company which they still retain, which stock was give- and received as a consideration for giving further time in the payment of the overdue installments under the Cowland agreement.

That at the time of making this arrangement Warner induced Warner Miller, Benjamin F. Chase and C. B. Wiser, to raise or assist in raising forty thousand dollars necessary to pay off the pressing obligations of the company above referred to, which they did and $32,500 thereof was used for that purpose.

Fifteenth.

That after said Lawler was made superintendent and took possession of said property as aforesaid, he had full charge and control of the business and affairs, purchased supplies, paid for same,
462 continued the books, and accounts in the name of the Seven Stars Gold Mining Company; that thereafter said Seven Stars Gold Mining Company continued to make payments for and on account of said Cowland contract as amended and modified in May, 1893, and made each and every payment thereunder up to and including the month of August, 1893, which said payments and all thereof, were received by, made to and retained by Lawler and Wells with full knowledge and notice of all the facts and circumstances aforesaid.

That said company did not make the payments which became due thereunder on the first day of September, 1893, and on the 10th day of September, 1893, the said Lawler and Wells claimed a default and took possession of the said mines and mining properties, and all the personal property, improvements and development work thereon, or continued the possession of the same which had been vested in Lawler as the superintendent of the Seven Stars Company, and Lawler and Wells then asserted and ever since that time have

asserted that Lawler no longer holds the said mining properties as the superintendent of the Seven Stars Company, but for and on his own behalf and on behalf of said Wells, and that said company, its creditors or stockholders, have no interest in the said properties or any right to any part thereof or to the proceeds derived from the same, and have no claim upon the payments paid Lawler and Wells in the manner aforesaid.

That on May 16th, 1893, Wells wrote to "H. H. Warner, president of Seven Stars Gold Mining Co." of the appointment of
463 Lawler as superintendent and expressing confidence that the affairs of the company would be well taken care of under his practical management.

That on the — day of September, 1893, Wells wrote Kennard, secretary of the Seven Stars Company, as follows:

(Letter is here inserted by request.)

PRESCOTT, ARIZONA, *Sept. 10th*, 1893.

W. E. Kennard, Esq., New York.

DEAR SIR: I have received notices of the temporary appointment of a receiver for the Seven Stars Company and the Industrial Company, and not having heard from you or Dr. Warner concerning the matter, and the payment of the $4,500 having failed which was due on the 1st inst. I take it that Dr. Warner and Mr. Cowland have abandoned the enterprise and severed their relations and connections with the property.

Mr. Lawler informs me that he had had no direct communication from any of you lately and looks at the situation about as I have indicated. Still he is preserving the property as best he can, expecting daily to hear something from you.

What is in contemplation by the assignment and in what way is the property to be affected by it, and what further connection do Dr. Warner and Mr. Cowland purpose with the mining and other property.

We feel entirely friendly to these gentlemen and do not like to see them suffer personal loss, but at the same time we feel that we should not sleep upon our rights whereby we may be injured.

I should like to hear from you and Dr. Warner. We understand that he is in Europe, but if he is in New York would like to hear what he has to say in the premises.

Very truly yours, ED. W. WELLS.

Sixteenth.

That the Seven Stars Gold Mining Company paid its stockholders—plaintiffs and others in like estate—as dividends about the sum of eleven thousand dollars, all which said stockholders still
464 retain; that all the stockholders still retain their stock unsurrendered.

Seventeenth.

That all of plaintiffs that testify in this suit say they never had any conversation with, communication from, or knowledge of Law-

ler or Wells in the matter, until shortly before the institution of this suit.

Eighteenth.

That some time during the month of August, 1893, the defendant Griffin was appointed receiver of the Seven Stars Gold Mining Company, under and by virtue of an order of the court in chancery in and for the State of New Jersey; that said Griffin did not, nor has he ever taken or attempted to take possession, or bring any suit for the recovery of the mines and mining properties in the complaint herein.

Nineteenth.

That these plaintiffs and others in like estate were ignorant of all facts showing or tending to show that the Seven Stars Mining Company was not the absolute owner of said mines and mining properties and had no notice or knowledge in regard thereto, and believed that said company was such owner until shortly before the commencement of this suit; that there never was a meeting of the stockholders of the said company except the meeting hereinafter referred to and the only communications sent by the company, its directors or officers to its stockholders, were several reports
465 and circulars in which it was stated in effect that the company owned the mines in question, was continually operating the same and was receiving the gross proceeds thereof in a due course of business.

That at a meeting held on April 4th, 1894, at which there *was* present about 350 of the stockholders these plaintiffs were authorized and directed to bring suit on behalf of themselves and all others in like estate; that said defendant, Griffin, receiver as aforesaid, were there present and demand was made upon him by plaintiffs to institute suit against Lawler and Wells, which said receiver refused to do.

(Endorsed:) No. 2365. C. B. Wiser, plaintiff *vs.* Lawler & Wells, *et al.* defendant-. Plaintiffs' findings of fact. Filed Nov. 1st, 1898. J. M. Watts, clerk.

466 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

CLINTON B. WISER, C. M. FIELD, JAMES A. FERGUSON, Dorsay Neville, Mary M. Heath, John J. Miller, John A. Kerr, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quentin, Plaintiffs,

*vs.*

JOHN LAWLER, ED. W. WELLS, THE SEVEN STARS GOLD MINING Company, a Corporation; The Industrial & Mining Guaranty Company, a Corporation; John Griffin as Receiver of the Seven Stars Gold Mining Company and John Griffin as Receiver of the Industrial & Mining Guaranty Company, Defendants.

} Decree.

This cause coming on to be heard upon the first day of November, 1898, before the Honorable Webster Street as the presiding judge in said cause, without a jury, upon the issues joined herein, and come the plaintiffs by their attorneys, T. W. Johnston and M. F. Gallagher, and the defendants, John Lawler and Ed. W. Wells by their attorneys, Herndon & Norris and E. M. Sanford, and the defendants, The Seven Stars Gold Mining Company and The Industrial & Mining Guaranty Company although legally served herein and the time for answering having expired, their default has been regularly entered herein, and the defendant, John Griffin as
467 receiver of the Seven Stars Gold Mining Company and likewise of the Industrial & Mining Guaranty Company having filed answer herein, appeared by his attorney, T. W. Johnston, and the court, after hearing the proofs and arguments of counsel, comes now and files his findings of fact and conclusions of law herein on consideration whereof,

It is ordered, adjudged and decreed,

That the plaintiffs take nothing by their said complaint;

That the said complaint be dismissed out of this court;

That the cross-bill herein of John Lawler and Ed. W. Wells be and the same is hereby dismissed out of this court, and

That the defendants, John Lawler and Ed. W. Wells recover of and from the plaintiffs above named, the sum of one hundred seven & $\frac{7}{100}$ dollars, their costs and disbursements in this behalf expended;

That the defendants, The Seven Stars Gold Mining Company and The Industrial & Mining Guaranty Company and John Griffin as receiver of the Seven Stars Gold Mining Company and John Griffin as receiver of the Industrial & Mining Guaranty Company do not recover any costs herein, and hereof let execution issue.

Dated November 1st, 1898.

WEBSTER STREET,
*Presiding Judge.*

(Endorsed:) No. 2365. Clinton B. Wiser *et al.*, pl'fs, *vs.* John Lawler *et al.*, def'ts. Decree. Entered Judgment Book #6, p. 339 Docket Book No. 2, page 128. Filed at —o'clock —m. Nov. 1st, 1898, J. M. Watts, clerk.

468 The District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

Met Monday. June 3rd, 1895, at 10 o'clock a. m., his honor John J. Hawkins, judge, presiding.

CLINTON B. WISER ET AL.
*vs.*
LAWLER & WELLS ET AL. } # 2365.

Jury demanded—case set June 19th, 1895.

Court met at 10 o'clock a. m., Thursday, July 11th, 1895, his honor John J. Hawkins, judge, presiding.

CLINTON B. WISER ET AL.
*vs.*
JOHN LAWLER ET AL. } # 2365.

The Hon. John J. Hawkins, presiding judge of this court, being disqualified to try this cause, it is therefore ordered that same be, and it is hereby referred to Hon. J. D. Bethune, presiding judge of the first judicial district of this Territory for trial.

Court took a recess until 10 o'clock a. m., Friday, July 12th, 1895.

JNO. J. HAWKINS, *Judge.*

469 Court met at 9 o'clock, a. m., Wednesday, July 17th, 1895. His honor, John J. Hawkins, judge, presiding.

His honor, Judge Hawkins, retiring, Hon. J. D. Bethune took his seat upon the bench.

CLINTON B. WISER ET AL.
*vs.*
LAWLER & WELLS ET AL. } # 2365.

Defendants moved the court that plaintiffs be required to file cost bond herein. Motion sustained, and it is ordered that said plaintiffs be and they are required to file cost bond herein within ten (10) days from this date.

Court took a recess until 9 o'clock a. m. tomorrow, Thursday, July18th, 1895.

J. D. BETHUNE, *Judge.*

Court met at 9.30 o'clock, a. m., Saturday, Nov. 30th, 1895. His honor, John J. Hawkins, judge, presiding.

CLINTON B. WISER
*vs.*
JOHN LAWLER ET AL. } # 2365.

Case passed.

Court adjourned until 10 o'clock a. m. Monday, December 9th, A. D. 1895.

JOHN J. HAWKINS, *Judge.*

470 Court met at 10 o'clock a. m. Friday, March 6, 1896. His honor, John J. Hawkins, judge, presiding.

CLINTON B. WISER ET AL., Plaintiffs,
*vs.*
JOHN LAWLER, ED. W. WELLS, ET AL., Defendants. } # 2365.

The Hon. John J. Hawkins being disqualified to try this cause, it is therefore, on the application of defendants, ordered that the same be, and it is hereby transferred to Tucson in the first judicial district, to be tried by Hon. J. D. Bethune, presiding judge of said first district

Court adjourned until 10 o'clock a. m. March 7th, 1896.

JNO. J. HAWKINS, *Judge.*

Court met at 10 o'clock a. m. Saturday, March 7th, 1896. His honor, John J. Hawkins, judge, presiding.

CLINTON B. WISER ET AL.
*vs.*
JOHN LAWLER, ED. W. WELLS, ET AL. } # 2365.

On application of defendants' counsel it is ordered that the order heretofore, to wit, on March 6th, 1896, made and entered transferring the above-entitled case to the first judicial district *to* Tucson, to be tried by Judge J. D. Bethune presiding judge of said
471 first district, be and the same is hereby vacated and set aside.

And it is further ordered that this case be and the same is hereby transferred to Judge Bethune to be tried in this fourth judicial district at Prescott.

Court adjourned to meet March 23rd, 1896, at 10 o'clock a. m.

JNO. J. HAWKINS, *Judge.*

Court met at 10 o'clock a. m. Thursday, April 30th, 1896. His honor, John J. Hawkins, judge, presiding.

CLINTON B. WISER ET AL.
*vs.*
JOHN LAWLER and ED. W. WELLS ET AL. } # 2365.

Comes now this cause on for hearing upon the motion of plaintiffs' counsel, Messrs. Johnston & Sloan, to vacate and set aside the order made and entered on the 7th day of March, 1896, revoking

the order made and entered herein on the 6th day of March, 1896, transferring the above-entitled case to the first district court of Pima county, to be tried by Hon. J. D. Bethune, presiding judge of said first district, on grounds stated in motion filed herein this day.

The motion being resisted, was argued by Messrs. Johnston and Sloan, supporting, & by T. G. Norris & J. F. Wilson, opposing, and being fully argued, the motion was sustained, and the said order vacated and set aside.

Court adjourned until 10 o'clock a. m. May 2nd, 1896.

JNO. J. HAWKINS, *Judge.*

472 The District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

His honor, Richard E. Sloan, judge, presiding.

Met at 10 o'clock a. m., Thursday, September 7th, 1897. June term, 1897.

Whereas, in the cases—

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| — — vs. — —. | } |
| — — vs. — —. | } |
| — — vs. — —. | } |
| C. B. WISER ET AL. vs. JOHN LAWLER & ED. W. WELLS ET ALS. | } No. 2365. |

the presiding judge of this district, the Honorable Richard E. Sloan, is disqualified by reason of having appeared as an attorney in said actions; and

Whereas, said presiding judge has requested the Honorable H. C. Truesdale, chief justice of the supreme court, and presiding judge of the third judicial district of the Territory of Arizona, to try such cases, and he has consented thereto, it is hereby ordered that said cases, and each of them, be assigned to said Honorable H. C. Truesdale, chief justice and presiding judge as aforesaid; and that he preside at the trial of and hear and determine said suits, and each and every one of them.

RICHARD E. SLOAN, *Judge.*

473 Continued.

The Honorable Richard E. Sloan retired, and the Honorable H. C. Truesdale took his seat upon the bench, and called and set calendar, and disposed of cases in which the Honorable Richard E. Sloan is disqualified, as follows:

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*vs.*
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*vs.*
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*vs.*
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CLINTON B. WISER ET AL.
*vs.*
JOHN LAWLER & E. W. WELLS, Def'ts. } # 2365.

Cause is set for trial Sept. 21, 1897.

RICHARD E. SLOAN, *Judge.*

Court met at 9 o'clock, a. m. Tuesday, September 21st, 1897. His honor H. C. Truesdale, judge, presiding.

CLINTON B. WISER ET AL., Pl'ffs,
*vs.*
JOHN LAWLER and ED. W. WELLS ET AL., D'f'ts. } # 2365.

Comes this cause on to be heard upon the amended complaint and the first ground of defense contained in the separate
474 answer of defendants Lawler and Wells; and come the respective parties by their attorneys, and the issues being argued, is by the court taken under advisement.

Comes now this cause on to be heard upon the amended complaint and the second ground of defense contained in the separate answer of Lawler and Wells thereto, and come the respective parties by their attorneys and the issues being argued, is by the court taken under advisement.

Comes now this cause on to be heard upon the motion of Lawler and Wells for a judgment on the cross-bill of Lawler & Wells and the answer thereto of the plaintiffs, and come the respective parties by their attorneys, and said motion being argued, is taken under advisement by the court.

Now upon motion of plaintiffs it is ordered that the default of the Industrial Mining and Guaranty Company, and the Seven Stars Gold Mining Company, be and the same is hereby entered.

Thereupon the defendants, Lawler and Wells move the court for leave to submit the issues of fact herein to a jury; and thereupon the court took said motion under advisement and gave the defendants Lawler and Wells until tomorrow morning at 10 o'clock a. m. to suggest to the court such issues as they may desire submitted to a jury.

The court took a recess until 10 o'clock a. m., tomorrow, Sept. 22nd, A. D. 1897.

H. C. TRUESDALE, *Judge.*

475 Court met 10 o'clock, a. m. Wednesday, September 22nd, 1897. Hon. H. C. Truesdale, judge, presiding.

CLINTON B. WISER ET AL., Pl'ffs,
*vs.*
JOHN LAWLER and E. W. WELLS ET AL., D'f'ts. } # 2365.

Comes now the respective parties by attorneys, and the defendants Lawler and Wells, now here submit to the court their special questions upon which they desire the findings of the jury, and the same being argued, and it appearing to the court that this is not a case which ought to be submitted on special questions to a jury, the motion of said defendants for a submission of issues to a jury be and the same is hereby denied, to which ruling of the court said defendants excepted.

Respective parties answering ready for trial, the court sitting without a jury, the court proceeded with the trial of the cause. The pleadings were read by respective counsel, and case stated to the court.

Documentary evidence,—deposition of H. H. Warner was admitted and read on the part of plaintiffs; and

Further hearing was continued until 9 o'clock a. m. tomorrow September 23rd, 1897.

H. C. TRUESDALE, *Judge.*

476 Court met at 9 o'clock a. m., Thursday Sept. 23rd, 1897. His honor H. C. Truesdale, judge, presiding.

CLINTON B. WISER ET AL., Pl'ffs,
*vs.*
JOHN LAWLER and ED. W. WELLS ET AL., D'f'ts. } # 2365.

Respective parties and their counsel being present, proceedings on trial of cause were resumed, and documentary evidence,—depositions of W. R. Canard, Harold J. Footner, Wm. W. Earl, Frank B. Herbert, Rob't S. Hedspeth, Lawrence F. Wilson, P. J. Carey, E. Z. Stebbins, J. E. Hedges, John Griffin and T. A. Rickard, were offered, admitted and read on the part of the plaintiffs.

Further hearing continued until 9.30 o'clock a. m. September 24th, A. D. 1897.

H. C. TRUESDALE, *Judge.*

477 Court met at 9.30 o'clock a. m., Friday, Sept. 24th, 1897. His honor, H. C. Truesdale, judge, presiding.

CLINTON B. WISER ET AL., Pl'ffs,
*vs.*
JOHN LAWLER and ED. W. WELLS ET AL., Def'ts. } # 2365.

The respective parties and their counsel being present, proceedings on trial were resumed, and documentary evidence—depositions of Joseph J. Miller, John A. Kerr, M. J. Riordan, Lucien F. Hiornes, Edgar G. Miller, Mrs. Mary E. Doty, Edward M. Smith, Louis H.

Meyer, Henry G. McMahon, Wm. Schaefer, Lester M. Crouch, James D. Vanderveer, Miss R. M. Verdon, Wm. H. Bailey, Sam'l B. Ray, Mary M. Heath and Cecil Quentin were offered, admitted and read in evidence on the part of the plaintiffs; and witnesses Warner Miller and H. E. Armitage were called, sworn and testified for plaintiffs.

Further hearing of cause continued until 9.30 o'clock a. m. tomorrow, Sept. 25th, A. D. 1897.

H. C. TRUESDALE, *Judge.*

478 Court met at 9.30 o'clock a. m., Saturday, Sept. 25th, 1897. His honor H. C. Truesdale, judge, presiding.

CLINTON B. WISER ET AL., Pl'ffs,
*vs.*
JOHN LAWLER and E. W. WELLS ET AL., Def'ts. } # 2365.

The respective parties and their counsel being present, proceedings on the trial of cause were resumed, and witnesses M. B. Hazeltine, Ed. W. Wells and Clinton B. Wiser were called, sworn and testified for plaintiffs; and plaintiffs rested for the present.

Further proceedings on motion of counsel continued until 9.30 o'clock a. m. Monday, September 27th, A. D., 1897.

H. C. TRUESDALE, *Judge.*

Court met at 9 o'clock, a. m. Monday Sept. 27th, A. D. 1897. His honor H. C. Truesdale, judge, presiding.

CLINTON B. WISER ET AL., Pl'ffs,
*vs.*
JOHN LAWLER and E. W. WELLS ET AL., Def'ts. } # 2365.

479 The respective parties and their counsel being present, proceedings on trial were resumed.

Defendants opening case, witness A. O. Brodie was called, sworn and testified for defendants.

Now on motion of plaintiffs, and by consent of defendants, witness C. B. Wiser was recalled for plaintiffs on direct examination.

Defendants resuming, witness H. E. Armitage was recalled for defendants, and witnesses H. Blauvelt, John Lawler and H. R. Wood, were called, sworn and testified for defendants.

Witnesses John Lawler and M. B. Hazeltine were recalled for defendants, and defendants rested case.

Further hearing continued until 9.30 o'clock a. m. tomorrow, Sept. 28th, 1897.

H. C. TRUESDALE, *Judge.*

Court met at 9.30 o'clock, a. m., Tuesday, Sept. 28th, 1897. His honor, H. C. Truesdale, judge, presiding.

CLINTON B. WISER ET AL., Pl'ffs,
*vs.*
JOHN LAWLER and E. W. WELLS ET AL., Def'ts. } # 2365.

480 The evidence being closed, and the respective parties and their counsel being present the argument of the case was opened by M. F. Gallager for plaintiffs followed by J. F. Wilson and S. M. Sanford, Esqrs. for the defendants; and
Further was continued until 9 o'clock a. m. tomorrow Sept. 29th, 1897.

H. C. TRUESDALE, *Judge.*

Court met at 9 o'clock a. m. Wednesday, Sept. 29th, 1897. His honor, H. C. Truesdale, judge, presiding.

CLINTON B. WISER ET AL., Pl'ffs,
*vs.*
JOHN LAWLER and E. W. WELLS ET AL., Def'ts. } # 2365.

Respective parties and their attorneys being present argument of the case was resumed by E. M. Sanford, Esq. for the defendants, followed by T. W. Johnston, Esq., for plaintiffs, and he followed by J. C. Herndon, Esqr. closing the argument for defendants, and he being followed by Geo. W. Kretzinger, Esqr. for plaintiffs, closing the argument.
Court took a recess until 10 o'clock, a. m. tomorrow, Sept. 30th, 1897.

H. C. TRUESDALE, *Judge.*

481 Court met at 10 o'clock, a. m., Thursday, Sept. 30th, 1897. His honor H. C. Truesdale, judge, presiding.

CLINTON B. WISER ET AL., Pl'ffs.,
*vs.*
JOHN LAWLER & ED. W. WELLS ET AL., D'f'ts. } # 2365.

This cause having beeen tried, argued and submitted for decision; now this day the respective parties and their counsel being present in court, and the court having duly considered the cause and being fully advised in the premises, files its findings of fact and conclusions of law; and based upon which findings of fact, it is hereby ordered and decreed,
First. It is ordered, adjudged and decreed;
That the first plea of defendants Lawler and Wells, be and the same is hereby dismissed,
Second. It is ordered, adjudged and decreed:
That the demurrer of said defendants be and the same is hereby overruled.
Third. It is ordered, adjudged and decreed:

That the motion of said defendants for judgment upon the cross-bill and answer thereto be and the came is hereby denied.

Fourth. It is further ordered, adjudged and decreed:

That said Lawler and Wells, nor either of them, have any
482 right, title or interest in and to any of the mines or mining properties described in the complaint herein, or any lien upon, or equity in the same, except as it is subject to the rights and equities of each and every stockholder of the Seven Stars Gold Mining Company, who is a *bona fide* holder of stock subscribed and paid for in good faith, without knowledge or notice of the fraudulent acts and transactions of said Warner and his associates who managed and controlled the defendant corporation.

Fifth. It is further ordered, adjudged and decreed:

That an accounting be had before a referee or master in chancery to be hereinafter appointed by order of the court, of all moneys for and on account of this property since the 12th day of May, 1892, whether the same were received from said Warner, from said Industrial Mining and Guaranty Company, and said Seven Stars Gold Mining Company, together with all moneys received by said defendants from ore and bullion receipts since said 12th day of May, 1892, whether the same were received prior or since the tenth day of September, A. D. 1893, together with an account showing the expenditures by said Lawler and Wells for and on account of said properties, or any thereof, since they assumed possession thereof in September A. D. 1893; said referee or master shall also ascertain and report to the court the number of shares of stock in the Seven

Stars Gold Mining Company, which were subscribed for, the
483 time when, by whom, and for what consideration the same were issued; and that said master make a full and complete report as to his doings in that ragard; said report to be made and filed on or before the first day of January A. D. 1898, unless the time is further extended by order of the court.

Sixth. It is further ordered, adjudged and decreed:

That pending a final decree herein, a receiver be appointed to take and hold said property described in the bill herein and all thereof, with all the rights, privileges and appurtenances thereto belonging; and that an order be entered herein naming such receiver, and fixing the amount of his bond, and upon the entry of such an order and the approval and filing of the bond of such receiver, said Lawler and Wells shall forthwith deliver to such receiver all of the mines, mining properties and other property described in the bill herein; such receiver to take and hold said properties with all the powers of a receiver in equity, to abide the further order, or the final decree in this case; with leave to said receiver to apply to this court from time to time for authority or direction in regard to the case and control of said property; and it is expressly provided that said receiver shall incur no expense other that such as is reasonably necessary for the care and preservation of the said property except upon leave first had of the court, and upon notice of the application therefor to the respective parties or their counsel.

484 Leave is hereby granted either party to make application to the court to amend or modify this decree, notice being first given to the opposite parties or their counsel.

Dated this 30th day of September. A. D. 1897.

By the court: H. C. TRUESDALE, *Judge.*

Come now the defendants and move the court to modify the interlocutory decree entered herein, and permit defendants to retain the possession of the property upon giving a good and sufficient bond, which motion was argued by respective counsel, and by the court overruled, to which ruling of the court the defendants then and there in open court duly excepted.

Come now the parties and on motion to carry into effect the interlocutory order and order of reference herein entered this day.

The court orders that E. B. Gage be and hereby is appointed receiver of all the mines, mining properties, machinery, buildings, tools, appliances, apparatus, supplies, ore on dumps, and all other property of every kind and nature whatever, known as the Seven Stars group of mines, as described in the bill of complaint therein; with full authority to take and receive possession thereof, and to keep, preserve and maintain the same from waste, or decay, and subject to the further order of this court, with like authority

485 to make or have made, an examination of said properties and mines and to make a report as to the condition of the same, and the condition of the underground workings of said mines; together with an inventory of all said property; with like authority to employ, have and keep the said mines and upon said mining properties a custodian or watchman to have constant care thereof;

It is further ordered that John Lawler and E. W. Wells deliver to said E. B. Gage as such receiver and turn over to him all of said mines and mining properties above described, referred to and mentioned, together with all books of account, and papers now in their possession with reference thereto, and especially the books of account and all other books, memoranda and data touching the purchase of machinery, supplies or other material or thing, purchased and supplied upon said property, and opened and kept as the books of account thereof, and of its operation and the sale of its ores from May 12th, 1892, to this date.

This order to become effective upon the execution of a bond by said E. B. Gage to run to the Territory of Arizona in the penal sum of ten thousand dollars, with security to be approved by the clerk of this court.

It is further ordered, that J. D. Carter be, and hereby is, appointed special master to take an account in this cause, and with and between the parties in interest herein;

486 First. Showing all moneys paid to or received by said Lawler and Wells for and on account of said property and properties since the 12th of May, 1892, whether the same were received from Warner, from the Industrial Mining and Guaranty Company, or from the Seven Stars Gold Mining Company;

Second. All moneys paid for or used in and about the operation

of said mines, and for the purchase of machinery, supplies, of every kind and nature, whatsoever, from May 12th, 1892, to September 10th, 1893, and from said last date to the date of the entry of this order.

Third. The amount derived from the sale of bullion and ores during the same period last aforesaid, and paid over to Lawler and Wells;

Fourth. The amount of machinery purchased after May 12th, 1892, and attached and sold under attachment for the payment thereof;

Fifth. To ascertain from the books of the Industrial Mining and Guaranty Company, and from the Seven Stars Gold Mining Company, now in evidence in this case, the number of shares of stock in the Seven Stars Gold Mining Company which was subscribed for, the several dates of said subscription, the persons severally subscribing therefor, and the consideration paid for the same, and to report the same to this court not later than the first Monday
487 in January, 1898, and in taking said account the said special master may consider the accounts of the Hillside Company, the Industrial Mining and Guaranty Company, and the account of Lawler and Wells as the same appear in the books of the Bank of Arizona, and the books of John Lawler since the 10th day of September, 1893; with full authority in said special master to call for or receive any other proper and material evidence that he may deem necessary, or that the parties to this suit may offer, to aid in said accounting and in making said report, and if necessary to subpœna witnesses for that purpose.

Said special master is further directed, immediately upon the completion of his said report to furnish a copy thereof to G. W. Kretzinger at the city of Chicago, and Herndon & Norris and T. W. Johnston, at the city of Prescott, Arizona.

It is further ordered that said receiver is hereby authorized to take and receive all moneys paid, realized, or collected upon the final decree hereinafter to be entered, and to hold the same subject to the further order of this court.

Court took a recess until 10 o'clock, a. m. tomorrow Oct. 1st, 1897.

H. C. TRUESDALE, *Judge.*

488 Court met at 9.30 o'clock a. m. Friday, December 10th, 1897. His honor, Richard E. Sloan, judge, presiding.

CLINTON B. WISER ET AL.
*vs.*
JOHN LAWLER ET AL. } No. 2365.

By consent of the plaintiffs and counsel for defendants, John Lawler and Ed. W. Wells, the following order is made in the above-entitled cause, to wit:

It appearing that this cause is now pending upon reference to a master in chancery, and that said parties consenting hereto have entered into a stipulation, as they well may, to take the depositions

of sundry witnesses at the city of New York in the State of New York, before a notary public of said city and State, and that it is necessary in order to properly examine said witnesses that they or either of them should have before them sundry books and documents which are exhibits in the above-entitled action on file in said court at the time of their examination as such witnesses, under said stipulation, and that said documents and books should remain in the custody of this court.

It is therefore by and with the consent of the respective parties above named, hereby ordered, that the exhibits in said cause, known as the cash book, the journal, the ledger, and check books of
489 the Industrial and Mining Guaranty Company and the stock ledgers of the Seven Stars Gold Mining Company, be and they are hereby placed in the care, custody and control of E. M. Sanford, an attorney of this court, to be by him carried or taken to the city of New York, and produced before such witnesses at their examination on said stipulation, and at the conclusion of the taking of said depositions, shall be by said E. M. Sanford taken and carried and returned to the office of the clerk of this court.

By consent of parties, it is further ordered, that the said Sanford be and is hereby granted leave to consign said books to himself, care of D. A. Delafield, 111 Broadway, New York, and that in returning said books he may consign same by express to the clerk of this court at Prescott, Arizona, using Wells, Fargo and Company's express.

RICHARD E. SLOAN, *Judge.*

Court met at 9.30 o'clock a. m. Monday, July 11th, 1898. His honor Webster Street, judge, presiding.

C. B. WISER ET AL.
*vs.*
LAWLER & WELLS. } # 2365.

This cause coming on to be heard on the report of the special master herein, and the exception of defendants thereto, said ex-
490 ceptions being overruled, to which def'ts except, the respective parties being present by counsel, T. W. Johnston Esq., Geo. W. Kretzinger, Esq., M. F. Fallager, Esq., appearing for plaintiffs, and E. M. Sanford, Esq., Herndon & Norris & J. F. Wilson Esq., appearing for the def'ts.

Thereupon counsel for pl't'ffs moved the court for judgment on the interlocutory decree and findings of the master, after having read to the court their proposed decree, to which decree the def'ts filed their exceptions in writing.

Thereupon argument of counsel was had to the court, and the court being fully advised in the premises, took the cause under advisement.

WEBSTER STREET, *Judge.*

Court met at 9.30 o'clock, a. m. Tuesday morning, July 12th, 1898. His honor, Webster Street, judge, presiding.

C. B. WISER ET AL.
*vs.*
JOHN LAWLER ET AL. } # 2365.

And now this cause coming on to be heard upon the report of E. B. Gage, receiver herein, and the court having examined his report and the inventory filed herewith, doth find and order:

491 1. That the said report is correct, and that the same be and is hereby approved and confirmed in all things.

2. Inasmuch as it appears to the court that outstanding certificates mentioned in said report in the aggregate amount of $2003.02 were issued by said receiver under the authority and direction of this court and the proceeds derived therefrom at the face value of said certificates have all been used in and about the payment for the custodianship and preservation of the property involved herein, it is ordered and decreed that the said certificates be and they are hereby made a first and prior lien upon the said property as against the interests of all the parties to this suit, and shall first be paid out of the proceeds of any sale of the said property under the direction of this court, or shall be paid from the proceeds of the working of the said mining property or from the sale of ore or mineral taken therefrom as hereinafter ordered or otherwise under the further order of this court.

3. That the resignation of E. B. Gage as receiver herein is hereby accepted and the said Gage as such receiver and the sureties upon his receiver's bond be and the same are hereby discharged from any and all liability in the premises; and Ed. W. Wells and John Lawler, two of the defendants herein, (they agreeing to act without compensation for personal services), are, with the consent of said plaintiffs appointed receivers herein to take possession of the

492 property involved in this suit and to receipt therefor to the said Gage a copy of said receipt to be filed with the clerk of this court; but said receivers shall not without the further order of this court create any debt or liability against said property except for the preservation thereof, and shall not part with the possession of the same or any part thereof or operate the same or take any ore or other property therefrom, without the further order of this court, provided, however, that said receivers may expend for the purpose of retimbering the underground workings of said mines and to put the same in condition for inspection but not to exceed in the cost thereof in labor and material the sum of $10,000.00, and said receiver- shall keep a correct and accurate account of said material and labor so done as provided, and shall report the same to this court with the proper receipts and vouchers, and that the expenses for the care and preservation of said property shall be included in the said maximum expenditure of $10,000.00.

That the said expenses shall be met and paid by the sale of ore taken from said mine by said receivers which shall all be shipped

over the S. F. P. & P. R'y Company, statements of the amount of ore to be so taken and shipped under this order to be filed with clerk of this court between 5th and 15th of each month, it being the intention of this order that the cost of labor and material and custodianship aforesaid shall be paid by the sale of ore and not
493 become a lien against said property prior to the lien created in the decree, and that the operation of said mines and taking of ore therefrom hereunder shall be limited and shall not exceed what is necessary to pay for said labor and material and preservation not to exceed the amount and cost of ten thousand dollars.

It is further ordered that from said operation and sale of ore after deducting the expenses thereof there shall first be paid said outstanding receivers' certificates, with interest thereon, and that said receivers may sell sufficient ore to pay said certificates in addition to said expenditure of $10,000.00.

That plaintiffs herein, their representatives and attorneys shall have at all times access to the books of account of said receivers, and to the said mines, for the purpose of examining the same.

And now this cause coming on for further hearing upon the motion and application of plaintiffs for the entry of a further and final decree herein; and plaintiffs being represented by their counsel G. W. Kretzinger, T. W. Johnston and M. F. Gallagher, and the defendants John Lawler and Ed. W. Wells being represented by their counsel Herndon & Norris, E. M. Sanford and J. F. Wilson, the default of the defendants Industrial & Mining Guaranty Company and Seven Stars Gold Mining Company having been duly entered in this cause for want of answer, and the defendant John
494 Griffin, receiver, answering *pro se*. The court having heard the argument of respective counsel, and having fully considered the report of the special master filed herein with the exceptions thereto filed by defendants and being fully advised in the premises does now order that the said report of C. P. Hicks, master in chancery, be and the same is hereby confirmed and approved and all exceptions thereto are hereby overruled. To which ruling of the court defendants then and there in open court duly excepted.

And the court now ordered that judgment and decree in favor of plaintiffs be entered herein as per decree.

Defendants' motion for a new trial filed herein is now on motion of E. M. Sanford set for hearing Sept. 15th, 1898.

WEBSTER STREET, *Judge*.

Court met at 10 o'clock a. m. Thursday September 8th, 1898. His honor, Webster Street, judge, presiding.

C. B. WISER ET AL.
*vs.*
LAWLER & WELLS ET AL. } #2365.

Defendants' motion for a new trial herein, coming on to be heard, was read by defendants' counsel and argued respectively, by G. W. Kretzinger Esq., for plaintiffs, and by J. F. Wilson Esq., for de-

fendants, and further hearing was continued until 9.30 o'clock a. m. tomorrow September 9th, 1898.

495 WEBSTER STREET, *Judge.*

Court met at 9.30 o'clock, a. m. Friday, Sept. 9th, A. D. 1898. His honor, Webster Street, judge, presiding.

C. B. WISER ET AL.
vs.
LAWLER & WELLS ET AL. } # 2365.

Argument upon the motion for new trial herein was resumed by J. F. Wilson Esq. for defendants, and further hearing of same was continued until 9 o'clock a. m. tomorrow, Sept. 10th, A. D. 1898.

WEBSTER STREET, *Judge.*

Court met at 9 o'clock a. m. Saturday, Sept. 10th, 1898. His honor, Webster Street, judge, presiding.

C. B. WISER ET AL.
vs.
LAWLER & WELLS ET AL. } # 2365.

Proceedings on hearing of motion for new trial herein were resumed; J. F. Wilson, Esqr. of counsel for defendants, con-
496 tinuing his argument in support of motion, followed by M. A. Gallagher, Esq., of counsel for plaintiffs, opposing; and further hearing herein was continued until 9 o'clock a. m. Monday, Sept. 12th, 1898.

WEBSTER STREET, *Judge.*

Court met at 9 o'clock a. m. Monday September 12th, A. D., 1898. His honor, Webster Street, judge, presiding.

C. B. WISER ET AL.
vs.
LAWLER & WELLS ET AL. } # 2365.

Proceedings on hearing of motion for new trial herein were resumed, M. A. Gallagher Esq. of counsel for plaintiffs, continuing his argument opposing said motion; J. C. Herndon and E. M. Sanford, Esqrs. of counsel for defendants followed in support of motion; G. W. Kretzinger Esq. of counsel for plaintiffs followed in opposition to the motion; and further hearing of argument was continued until tomorrow September 13th 1898, at 9 o'clock, a. m.

WEBSTER STREET, *Judge.*

497 Court met at 9 o'clock a.m. Tuesday September 13th, A. D., 1898. His honor, Webster Street, judge, presiding.

C. B. WISER ET AL.
vs.
LAWLER & WELLS ET AL. } # 2365

Proceedings on hearing of motion for new trial herein were resumed; G. W. Kretzinger Esq. of counsel for plaintiffs continuing his argument in opposition to said motion; and was followed by T. W. Johnston Esq. for plaintiffs and closing the argument opposing; and further hearing was continued until 9.30 o'clock a. m. tomorrow September 14th, A. D. 1898.

WEBSTER STREET, *Judge.*

Court met at 9 o'clock a. m. Wednesday September 14th, 1898. His honor, Webster Street, judge, presiding.

C. B. WISER ET AL.
vs.
LAWLER & WELLS ET AL. } # 2365

Proceedings on hearing of motion for new trial herein were resumed; E. M. Sanford, Esq. concluded his argument for defendants in favor of motion, and the arguments being closed, the motion was submitted and by the court taken under advise-
498 ment.

WEBSTER STREET, *Judge.*

Court met at 10 o'clock a. m. Saturday October 22, 1898. His honor, Webster Street, judge, presiding.

C. B. WISER ET AL.
vs.
JOHN LAWLER ET AL. } # 2365.

The court having heretofore taken the motion for a new trial herein under advisement, and there being present the plaintiffs by J. E. Morrison, representing T. W. Johnston, one of the attorneys for plaintiffs, and the defendants John Lawler and Ed. W. Wells appearing by their counsel, it was ordered and adjudged that the final and the interlocutory decrees heretofore made and entered in this cause be and the same are hereby set aside and held for naught.

It is further ordered that the motion for a new trial herein filed by John Lawler and Ed. W. Wells, be, and the same is hereby sustained and a new trial of the issues joined awarded herein.

WEBSTER STREET, *Judge.*

499 Court met at 10 o'clock a. m. Tuesday Nov. 1st, 1898. His honor, Webster Street, judge, presiding.

CLINTON B. WISER ET AL.
*vs.*
JOHN LAWLER ET AL. } # 2365.

Comes now this cause on to be heard upon the application of the plaintiffs to amend the prayer of their amended complaint, and come the plaintiffs by their attorneys, M. F. Gallagher and T. W. Johnston, and come the defendants John Lawler and Ed. W. Wells by their attorneys J. C. Herndon and E. M. Sanford, and the court being sufficiently advised in the premises, it is ordered, that the plaintiffs have leave to amend their prayer of their complaint instanter, which was accordingly done.

Whereupon this cause comes on to be heard upon the issues joined herein, and come the respective parties by their said attorneys, and thereupon this cause is submitted to the court without the intervention of a jury, and thereupon the plaintiffs, to maintain the issues on their part joined, introduced evidence and testimony produced by the plaintiffs on a former trial of this case and that introduced before the master herein, and rested, and thereupon the defendants, to maintain the issues on their part joined, introduced evidence and testimony produced by the defendants on a former trial of this case, and that introduced before the master
500 herein, and rested, and the court, after hearing proofs produced and arguments of the counsel, comes now and files his findings of fact and conclusions of law, on consideration whereof it is ordered and adjudged;

That the complaint herein be dismissed out of this court without costs as to the defendants, The Seven Stars Gold Mining Company, The Industrial and Mining Guaranty Company and John Griffin, as receiver of said companies, and with costs to be taxed by the defendants John Lawler and Ed. W. Wells against the plaintiffs, and this dismissal carries the cross-bill with it.

Thereupon this cause comes on to be heard upon the plaintiffs' motion for a new trial, the same being argued by respective counsel, and considered by the court, and the said motion be and the same is hereby denied, to which ruling the plaintiffs excepted.

Thereupon the receivers herein, John Lawler and Ed. W. Wells submitted to the court their second report herein, in consideration whereof the same be and is hereby approved.

By consent of the parties it appears that the receivers' certificates heretofore issued herein have been paid by the present receivers and that the disbursements of the present receivers equal the receipts of moneys coming into their hands during their administration, and that there are no debts of receivers outstanding.

501 It is on motion of defendants John Lawler and Ed. W. Wells ordered,

That the property in controversy, to wit, the property described in the amended complaint herein and in the inventory filed herein

by the receivers, John Lawler and Ed. W. Wells, and in the possession of said receivers, John Lawler and Ed. W. Wells, be and the same is hereby surrendered, delivered and restored to the defendants, John Lawler and Ed. W. Wells, and that the receivers herein, to wit, John Lawler and Ed. W. Wells as such receivers, be, and the same are hereby discharged from further duties as such receivers herein.

Thereupon come the plaintiffs and give notice in open court of an appeal to the supreme court of the Territory of Arizona from the judgment and decree rendered herein, and from the order denying the motion for, a new trial herein.

On motion of plaintiffs, defendants consenting, it is ordered that plaintiffs' attorneys herein may sign the principal's name to appeal bond herein.

WEBSTER STREET, *Judge.*

Court met at 9.30 o'clock a. m., Wednesday, November 9th, 1898. His honor Webster Street, judge, presiding.

CLINTON B. WISER ET AL., P'ffs,
*vs.*
JOHN LAWLER ET AL., Def'ts. } # 2365.

502 Comes now this cause on to be heard before the Hon. Webster Street sitting as presiding judge in said cause, in open court, upon the motion of the plaintiff- to retax the costs herein, and come the plaintiffs by their attorney, T. W. Johnston, and the defendants John Lawler and Ed. W. Wells, by their attorney, E. M. Sanford, and after hearing the proofs produced, it is ordered:

With the consent of parties that the item of $100 paid C. P. Hicks, fees, the fee is hereby stricken from the cost bill; with the consent of parties, that the item of cash paid J. D. Carter, $250, as master's fees, be and the same is hereby stricken from the cost bill; and, by the court, that the item of cash paid on account of principal and interest of receivers' certificates amounting to $2,142.36 be and the same is hereby stricken from the cost bill; to which ruling in striking said item said cash for receivers' fees from the cost bill, the herein defendants, John Lawler and Ed. W. Wells, at the time except.

Upon cause shown the time for making a case herein on appeal be and the same is hereby extended as follows: That a case may be made and served on or before the 25th day of November, A. D. 1898, and that the time for serving suggestions of amendment thereto be and is hereby extended to the 30th day of November,

1898, and thereupon the defendants shall give to the plaintiffs
503 notice of the time when, and place where, said case with the suggestions of amendment thereto if any will be presented to the trial judge for settlement, signature and certificate; thereupon the defendants, John Lawler and Ed. W. Wells gave notice in open

court of an appeal to the supreme court from an order retaxing the costs herein as to the item of receivers' expenses.

Dated Nov. 9th, 1898.

WEBSTER STREET, *Judge.*

TERRITORY OF ARIZONA, } *ss:*
*County of Yavapai,* }

I, J. M. Watts, clerk of the district court, fourth judicial district of Arizona, in and for Yavapai county, do hereby certify that the foregoing and hereto-attached thirty-four (34) pages of typewritten matter, contains a full, true and complete copy and transcript of the minute entries of proceedings had in the case of C. B. Wiser *et al. vs.* John Lawler and Ed. W. Wells *et al.*, # 2365, as the same appears of record in my office, and of the whole thereof.

Witness my hand and the seal of said court at office in Prescott, this 26th day of November, A. D. 1898.

[SEAL.] J. M. WATTS, *Clerk.*

504 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

C. B. WISER ET ALS., Plaintiffs,
*vs.*
JOHN LAWLER, ED. W. WELLS, ET ALS., Defendants. } No. 2365. Bond on Appeal.

Know all men by these presents:—That we, C. B. Wiser and all of the other plaintiffs named in the amended complaint filed in this case, as principals, and Henry Kinsley and E. B. Gage, as sureties, said sureties each being residents of said county and Territory, and all and each of our heirs and executors are hereby jointly and severally bound unto the said defendants in said cause, to wit:—John Lawler and Ed. W. Wells and each of them, in the sum of four hundred ($400.00) dollars.

Witness our signatures this 11th day of November, A. D. 1898.

The condition of the above obligation is such that whereas at the trial of the above-entitled cause by said court, to wit:—on the 2nd day of November, A. D. 1898, it was the judgment of the said court that the said plaintiffs take nothing by their complaint and that the same be dismissed and that the said defendants, John Lawler and Ed. W. Wells, do have and recover from the said plaintiffs the costs by them in said cause expended, and whereas, as pro-
505 vided by law, said plaintiffs gave notice in open court that they appealed from said order and judgment of said court and they have appealed therefrom to the supreme court of the Territory, and whereas that the clerk of said court, as provided by law, has fixed the probable amount of costs which have accrued in the trial of said cause and which will accrue in the supreme court of said Territory, at the sum of two hundred ($200.00) dollars.

Now therefore, if said plaintiffs shall prosecute their said appeal with effect and shall pay all the costs which have accrued in the court below, or which may accrue in the appellate court, then this

obligation shall cease and be of no further force and effect, otherwise to remain in full force and virtue.

C. B. WISER AND ALL
OTHER PLAINTIFFS,
By G. W. KRETZINGER,
M. F. GALLAGER, &
T. W. JOHNSTON,
*Their Att'ys of Record.*
HENRY KINSLEY.
E. B. GAGE.

It is stipulated by counsel for the respective parties to this suit that this bond shall be regarded as if signed by the plaintiffs with their respective names, and no question will be raised because said plaintiffs sign thereto by their counsel.

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G. W. KRETZINGER,
M. F. GALLAGER, &
T. W. JOHNSTON,
*Att'ys for Plaintiffs.*

J. F. WILSON,
HERNDON & NORRIS, &
E. M. SANFORD,
*Att'ys for Defendants.*

TERRITORY OF ARIZONA, } ss:
*County of Yavapai,* }

Before me, Jennie C. Willis, a notary public in and for said county and Territory on this day personally appeared Henry Kinsley and E. B. Gage, each of whom for himself, and not one for the other, after being first duly sworn, deposes and says:

That he is a surety upon the foregoing bond; that he is a resident householder of the said county and Territory; that he is worth more than the amount for which he has become surety upon the said bond, to wit: four hundred ($400.00) dollars, in property not exempt from execution or attachment, over and above all his just debts and liabilities.

HENRY KINSLEY.
E. B. GAGE.

Subscribed and sworn to before me this 12th day of November, A. D. 1898.

JENNIE C. WILLIS,
[SEAL.] *Notary Public.*

My commission expires 5, 13, 1902.

The above bond approved this 12th day of November, 1898.

J. M. WATTS,
*Clerk of said Dist. Ct.*

(Endorsement:) Approved and filed at 10 o'clock a. m. Nov. 12, 1898. J. M. Watts, clerk.

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507 TERRITORY OF ARIZONA, } ss:
*County of Yapavai,* }

I, J. M. Watts, clerk of the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, do hereby certify that the foregoing and hereto attached is a full, true and complete copy of the bond on appeal in the case of C. B. Wiser *et al. vs.* Lawler & Wells *et al.*, No. 2365, with the date of filing thereof as the same appears on file in my office.

Witness my hand and the seal of said court, this 25th day of November, A. D. 1898.

[SEAL.] J. M. WATTS, *Clerk.*

508 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

C. B. WISER ET AL., Plaintiff-,
*vs.*
JOHN LAWLER, ED. W. WELLS, ET AL., Defendants. }

I, J. M. Watts, clerk of said district court, do hereby certify that the above and foregoing record contains a true and correct and complete copy of all of the minute entries in said cause made, and of all the proceedings therein had and of all the records thereof on file in my office, except depositions, exhibits and books, which were introduced in evidence.

Witness my official signature and seal of office this 7th day of January, 1899.

[SEAL.] J. M. WATTS, *Clerk.*

(Endorsed:) No. 2365. In the dist. court of fourth jud. dist. of Ariz. in and for Yavapai county. C. B. Wiser *et al.*, pl'ffs, *vs.* John Lawler and Ed. W. Wells *et al.* def'ts. Transcript of minute record. No. 651. In the supreme court of the Territory of Arizona. Clinton B. Wiser *et al.* appellants *vs.* John Lawler *et al.* appellees. Transcript of minute record. Filed January 9th, 1899. Lloyd Johnston, clerk.

509 In the Supreme Court of the Territory of Arizona, January Term, 1899.

CLINTON B. WISER ET AL., Appellants,
*vs.*
JOHN LAWLER ET AL., Appellees. } No. 651.

*Motion for Statement of Facts, etc.*

T. W. Johnston and Kretzinger, Gallagher & Rooney, attorneys for appellants.

Filed January 13th, 1899.

LLOYD JOHNSTON, *Clerk.*

510 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1899.

CLINTON B. WISER, C. M. FIELD, JOHN A. KERR, JAMES A. FERguson, Dorsay Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, Appellants,

*vs.*

JOHN LAWLER, ED W. WELLS, SEVEN STARS GOLD MINING COMpany, Industrial Mining & Guaranty Company, and John Griffin, Receiver, Appellees.

*Motion for Statement of Facts, Together with Statement Submitted by Appellants.*

May it please this honorable court:

We conceive it to be the province and duty of this court
511 under the act of Congress of April 7th, 1874 to make a statement of the facts of this case for the Supreme Court of the United States in the event that an appeal to that court is taken by any of the parties to this record. Appellants, therefore, file the attached motion for a statement of facts, together with a series of findings which to them appear material and indisputably established, and, for the convenience of the court, briefly group the evidence showing each finding.

Questions here raised require the reviewing court to study minutely the words, conduct, knowledge, etc., of Lawler and Wells. Equitable estoppel and fraud, actual or constructive, are not facts, but conclusions to be deduced from *all* the facts. To enable the Supreme Court therefore to reach the equity of this case without reading the evidence a full and particular statement of the facts proved is most necessary.

Respectfully submitted.

T. W. JOHNSTON AND
KRETZINGER, GALLAGHER & ROONEY,
*For Appellants.*

In the Supreme Court of the Territory of Arizona, January Term, A. D. 1899.

CLINTON B. WISER ET AL.
*vs.*
JOHN LAWLER ET AL.

And now come the said appellants, by their attorneys, T. W. Johnston and Kretzinger, Gallagher & Rooney, and move the
512 court that upon the rendition of its decision herein it hold and adjudge that each of the following facts is material to the issues in this case and shown by the record, viz:

1. That at all the times herein mentioned the legal title to the

mining property described in the amended complaint stood of record in the proper records of Yavapai county, Territory of Arizona, in the defendants John Lawler and Ed W. Wells.

*Evidence:* This is undisputed.

2. That for a number of months prior to May 12th, 1892, Lawler and Wells had operated this mining property and extracted a great quantity of ore therefrom.

*Evidence:* Wells, Abstract 191.

3. On and prior to May 12th, 1892, Lawler owned three-fourths of the mining property and Wells one-fourth.

*Evidence:* Wells, Abstract 237.

4. That at all times herein mentioned Lawler and Wells resided at Prescott, Territory of Arizona.

*Evidence:* Lawler, Abstract 221; Wells, Abstract 233.

5. About May 7th, 1892, H. H. Warner, accompanied by T. A. Rickard, an expert mining engineer, visited Prescott for the purpose of negotiating for the purchase of said mining property, and negotiations were begun which resulted in the execution of the escrow agreement and deed of May 12th, 1892, and the instrument of guaranty of the same date, exhibited with the answer of defendants Lawler and Wells.

*Evidence:* Undisputed.

6. That at the time of making the contract for the pur-
513 chase of these mines, it was the purpose of Warner, to the knowledge of Lawler and Wells, to meet the deferred payments under the Cowland contract by the formation of a corporation to operate the mines and the general sale of the stock of such corporation in the United States and England.

*Evidence:* Testimony of T. A. Rickard, 164–165–168; of Warner, 123–124–125–139; of Lawler, 222–229; of Wells, 235, 239. Also corroborating facts that Warner refused to execute contract in his own name; that payments were deferred; and subsequent conduct of Warner was obviously in pursuance of this plan.

Rickard (Abst. 164): "Warner intended to float the mine in New York and London and did not wish his name to appear because he was in bad repute in London. * * * Lawler and Wells were cognizant of the object of substituting Cowland's name. * * * Warner spoke freely with Lawler and Wells before his departure, and after he left I had several conversations with Lawler in a friendly sort of way, and told him of the steps that Mr. Warner was taking for the promotion of the mine in New York and London. * * * He (Lawler) being well disposed towards Warner and the mine and the success of floatation. * * * Lawler and Wells were fully aware that the mine was going to be floated."

7. From the beginning Lawler and Wells were aware that Warner was purchasing the property for the purpose of floating it.
*Evidence:* Same as preceding.

8. Upon their execution, the deed, escrow agreement and guaranty, were placed in the Bank of Arizona, where they remained unrecorded until November 10, 1893.
*Evidence:* This fact is undisputed.

9. In the purchase of the property Cowland was used as
514 the figurehead for H. H. Warner, who was the real party in interest.
*Evidence:* This fact is undisputed. Also Herbert 158.

10. At all times herein mentioned defendant Wells was owner of one-third of the stock of Bank of Arizona, and made the bank his business headquarters at Prescott.
*Evidence:* Hazeltine, Abs. 243; Wells, Abs. 239.

11. At all times herein mentioned after November 1st, 1892, Wells was the vice-president of the Bank of Arizona.
*Evidence:* Wells, Abs. 191.

12. That on or about the 15th day of May, 1892, John Lawler delivered to T. A. Rickard, as the agent of Charles Cowland, the occupation of said group of mines under said escrow agreement, "Exhibit A;" that from May 15, 1892, to the 15th day of June, 1892, the funds necessary to carry on the operations of said mines under the administration of said Rickard, were furnished by the H. H. Warner Investment Company, a corporation, of which the said H. H. Warner was during that time the president, the amount of which said funds does not appear in the evidence.
*Evidence:* This is undisputed.

13. That on the 14th day of June, 1892, said H. H. Warner, Wm. M. Earl, Wm. R. Kennard, Francis B. Bowen and Charles Cowland incorporated, under the laws of the State of New Jersey, the Industrial and Mining Guaranty Company, with a capital of five hundred thousand dollars ($500,000), divided into five thousand
515 (5,000) shares, of the par value of one hundred dollars ($100) each, and on June 15, 1892, that corporation was organized with said incorporators as directors, with H. H. Warner as president; Wm. R. Kennard, vice-president; Wm. M. Earle, secretary, and Francis B. Bowen as treasurer.
*Evidence:* These facts are undisputed.

14. The said Industrial and Mining Guaranty Company was formed for the purpose of doing a general promoting and banking business in enterprises in which H. H. Warner was interested. Its main work was the promotion of this mining property under the name of the Seven Stars Gold Mining Company, as herein found.
*Evidence:* Warner, 123; Footner, 149; Herbert, 158.

15. That on the 15th day of June, A. D. 1892, said Charles Cowland made and delivered to the Industrial and Mining Guaranty Company a written assignment of all his right, title and interest in and to the escrow agreement, "Exhibit A" aforesaid, a true copy of which said written assignment is attached to said answer and marked "Exhibit D;" that contemporaneously with the execution and delivery of said written assignment, "Exhibit D," the said Charles Cowland made and delivered to said Industrial and Mining Guaranty Company a deed of conveyance, a true copy of which said conveyance is attached to said answer and marked "Exhibit F;" that contemporaneously with the execution and delivery of said assignment, "Exhibit D," and said conveyance "Exhibit F," the said H. H. Warner made and delivered, to said Industrial and Mining Guaranty Company a written consent to the making of said assignment and deed, Exhibits "D" and "F," a true copy of which said written consent is attached to said answer and marked "Exhibit E;" that
516 at the time the said Industrial and Mining Guaranty Company took and received said assignment, "Exhibit D," said written consent, "Exhibit E," and said conveyance, "Exhibit F," from the said Charles Cowland, to wit: on June 15, 1892, the said Industrial and Mining Guaranty Company had full knowledge and notice of the terms, conditions and provisions of the escrow agreement, "Exhibit A," aforesaid, and then and there by resolution of the board of directors of said Industrial and Mining Guaranty Company assumed all the covenants, conditions and agreements in the said escrow agreement, "Exhibit A," aforesaid on the part of said Charles Cowland, to be kept and performed; and further, by said resolution, said Industrial and Mining Guaranty Company promised to carry out and perform said escrow agreement, "Exhibit A," and all the terms, conditions and covenants therein contained, on the part of said Cowland to be performed, and make the payments for said mines, mining properties, and other goods and chattels provided for in said escrow agreement, "Exhibit A," and procure said deed for the same, then in the hands of the Bank of Arizona.

*Evidence:* These facts are undisputed.

16. That on the 15th day of June, 1892, the said T. A. Rickard delivered to the Industrial and Mining Guaranty Company the occupation of said Hillside group of mines, and on that day the said company entered into occupation of said group of mines, with full knowledge and notice of the terms, conditions and provisions of the escrow agreement, "Exhibit A," aforesaid; that said company remained in occupation and operation of said Hillside group of mines from June 15, 1892, to and until the 1st day of October, 1892.

*Evidence:* These facts are undisputed.

517 17. That on the 15th day of August, 1892, said H. H. Warner, William M. Earle, and one Robert S. Hudspeth, as incorporators, procured a certificate of incorporation of the Seven Stars Gold Mining Company, under the laws of the State of New Jersey, with a capital of three million dollars ($3,000,000), divided

into six hundred thousand (600,000) shares, of five dollars ($5) each, wherein, among other things, said corporation was authorized to hold, operate and convey mines; that afterwards and on the 24th day of September, 1892, the said Seven Stars Gold Mining Company was organized by the election of the following-named directors, to wit: Warner Miller, Hulbert H. Warner, J. Clifford Richardson, J. Herbert Jefferis, Arthur G. Yates, John W. Vrooman, B. E. Chase, Clinton B. Wiser, and Robert S. Hudspeth; with H. H. Warner as president, Robert S. Hudspeth as vice-president, and Harold J. Footner as secretary and treasurer.

*Evidence:* These facts are undisputed.

18. The active promoters of the Seven Stars Gold Mining Company were H. H. Warner and the Industrial Mining & Guaranty Company. Their purpose in organizing the company was to operate this mining property in its name and to offer the stock of the company for public subscription, and out of the proceeds of such operation and the sale of stock to make the payments under the Cowland contract and thus secure the title for the company.

*Evidence:* Warner, Abs. 123, etc.; Kennard, Abs. 140; Footner, 149: "Cowland transferred the property to the Industrial Company in order that the property might be developed, a stock company formed, and the property be paid for by the issuance of stock. * * * The main enter-
518 prise of the Industrial Company was the formation of the Seven Stars Company, which was formed by them in 1892, to sell the stock of the company, and by the sale of such stock to liquidate their indebtedness on the mining properties in Arizona." Herbert, Abs. 159.

19. On September 10, 1892, the Industrial Mining & Guaranty Company, through its board of directors, by a resolution duly adopted, did offer to sell and convey all its right, title and interest in the following mining properties, a portion of which are described in the escrow agreement and deed, Exhibits "A" and "B" aforesaid, to wit: The Seven Stars, Happy Jack, Contact No. 1 and Contact No. 2 mines; also, the claim known as Camp and the locations known as Mescal, Elwood, Midnight, Waterfall and Boulder, and all its right, title and interest in the 180 acres of land at Camp Wood, including town sites and water rights, to a company formed or to be formed, and known as the Seven Stars Gold Mining Company, upon said company showing that it had placed two hundred thousand dollars ($200,000) for working capital, and upon receiving two million eight hundred thousand dollars ($2,800,000) in cash or stock of the Seven Stars Gold Mining Company, and by said resolution the officers of said company were instructed and empowered to sign the necessary contracts and to deliver deeds of the same, upon compliance with said conditions.

*Evidence:* These facts are undisputed.

20. That on the 1st day of October, 1892, the Industrial and Mining Guaranty Company placed the Seven Stars Gold Mining Com-

pany in the occupation of said Hillside group of mines, and on that day the latter company entered into said occupation, with full knowledge and notice on the part of its officers of the terms,
519 conditions and provisions contained in the escrow agreement, "Exhibit A," aforesaid, and with full knowledge and notice of the resolution of the board of directors of the Industrial and Mining Guaranty Company referred to in finding 12 herein.

*Evidence:* These facts are undisputed.

21. Lawler and Wells and the Bank of Arizona had full knowledge and notice of the occupation and operation of the mines and mining properties by the H. H. Warner Investment Company, the Industrial Mining & Guaranty Company, and the Seven Stars Gold Mining Company during all the times that such occupation and operation continued, as herein found.

*Evidence:* This is undisputed.

22. That from October 1st, 1892, until about the 10th day of September, 1893, the Seven Stars Gold Mining Company was in the open and public operation of the said mining property; purchased the supplies and machinery therefor in its own name, kept the accounts, hired and discharged the employés, and extracted and sold the ore, and caused the gross proceeds from the sale of ore to be paid directly to Lawler and Wells under the Cowland agreement, as payments made by the Seven Stars Gold Mining Company.

*Evidence:* Herbert, Abs. 161; H. H. Warner, Abs. 130, 131, 132; Kennard, Abs. 145; Rickard, Abs. 168; letter Seven Stars Company to Bank of Arizona, October 27th, 1892, (Abs. 201); letters of Denver Public Sampling Company to Bank of Arizona, Abs. 243; letter Hazeltine to Footner, April 3, 1893, Abs. 204; letter Hazeltine to Earl, October 22nd, 1892, Abs. 205, and other evidence appearing in abstract.

23. All the expenses of the Seven Stars Gold Mining
520 Company of every kind, and the expenses of the operation of the mines, purchase of supplies, machinery, etc., during all the time that the Seven Stars Company was in possession of the property were paid by the Industrial Mining and Guaranty Company as the agent of the Seven Stars Gold Mining Company, to the knowledge of Lawler and Wells and the Bank of Arizona.

*Evidence:* Same as preceding. Also statement of Hazeltine, Abs. 189; also testimony of Hazeltine, Abs. 190, as follows: "$130,223.85 was sent to us from New York by the company there for use for expenses in the operation of the mines, to be drawn out by the duly authorized agents of the Hillside and Seven Stars mines. It was used for that purpose." Also statement defendants, Abs. 244. He states that the Industrial Company paid on account of the Hillside agency $51,477.41; on the mine account of the Seven Stars Gold Mining Company $77,910.04, and on the machinery of the Seven Stars Gold Mining Company $12,528.87.

24. On October 31, 1892, was executed Exhibit J to the plea of the defendants Lawler and Wells, and on May 12, 1893, Exhibit K to the said plea of the defendants.

*Evidence:* Undisputed.

25. That on or about May 12, 1892, Lawler and Wells turned over to Warner a map of the mining property, upon which was written, "A map of the Hillside mines," also two expert reports upon the property, and copies of ore returns showing the previous output of the property.

*Evidence:* This is undisputed.

26. Using the information mentioned in the preceding finding as a basis, Warner about the time of the organization of the
521 Seven Stars Gold Mining Company began the preparation of an elaborate prospectus for that company, which prospectus he intended to issue and circulate throughout the United States; also the preparation of a similar prospectus for circulation throughout Great Britian, and a third for use in France. The purpose of the preparation of these prospectuses was to induce the sale of the stock of the Seven Stars Gold Mining Company. True copies of such prospectuses as completed and circulated are exhibited with the amended complaint. The American prospectus was entirely drafted in the office of the Seven Stars Gold Mining Company at 41 Broadway, New York city, and was printed in New York city. The proof-sheets of the English prospectus were prepared in New York city and sent over to Charles Cowland at London.

*Evidence:* Warner, Abs. 128; Kennard, 141, 142; Footner, 150; Herbert, 158, 160; Earl, 155.

27. At the same time Warner prepared the map and blank subscription form exhibited with the complaint.

*Evidence:* Same as preceding.

28. Beginning on September 28, 1892, and continuing for three weeks thereafter, 300,000 copies of the American prospectus, maps and blank subscription forms were mailed together, three in one envelope, throughout the United States.

*Evidence:* Herbert, 159, 160. Wilson, 173: "The first order was given September 28, 1892, and the distribution was made within three weeks from date of order."

29. During the month of October, 1892, copies of the Eng-
522 lish prospectus, accompanied by said maps and subscription forms, were circulated throughout Great Britain, and the same advertised in the newspapers.

*Evidence:* Warner, 129; Herbert, 160.

30. The French prospectus was never sent out.

*Evidence:* Undisputed.

31. The map furnished Warner by Lawler and Wells on May 12,

1892, was used as the basis of the lithograph map circulated with the prospectus.

*Evidence:* Warner, 125; Kennard, 142; Herbert, 161.

32. The tabulated statements on the back of the prospectus, the historical and descriptive data, and the Blauvelt report quoted in the prospectus, were furnished by Lawler and Wells, and they knew the use that was made of such matter.

*Evidence:* Herbert, 161; Warner, 128; Kennard, 141, 142; Footner, 152, 153.

33. The American prospectus was printed at large in a number of leading newspapers on October 1st, 1892, and this general advertisement created wide comment, all of which was well known to Lawler and Wells.

*Evidence:* Herbert, 158; letter to printer of prospectus, September 17, 1892, Abs. 202. Lawler testified that he knew "what news was running all over the country."

34. Copies of the American prospectus, map and blank subscription form, were received in the course of their distribution by plaintiffs residing in the United States, and copies of the English prospectus, map and blank subscription form were received by such of the plaintiffs as resided in Great Britain, and thereon and
523 within a reasonable time thereafter, all of plaintiffs, and about 500 other persons, purchased various amounts of the shares of stock of the Seven Stars Gold Mining Company and paid therefor.

*Evidence:* Abst. 173–187. Statement of Footner, Abst. 196. Herbert, Abst. 162: "About $250,000 of stock of said company was sold by the use of said prospectus."

35. That 21 of the purchasers of stock of the Seven Stars Gold Mining Company, most of whom are plaintiffs herein, testified in the case as follows:

(*a.*) Each relied upon the statements contained in the prospectus and map as distributed, and believed from examination thereof that the Seven Stars Gold Mining Company was the absolute owner of the mines and properties therein mentioned and referred to.

(*b.*) That they would not have purchased were it not for such belief.

(*c.*) That they had no knowledge outside of the prospectus and map touching the ownership of the property.

*Evidence:* Abst. 173–187; Wiser, 193.

36. None of said persons at the time of their said purchase knew Lawler or Wells, or any act, statement, omission or knowledge of Lawler or Wells.

*Evidence:* This is undisputed.

37. The extension agreement of May, 1893, was delivered by Law-

ler and Wells to H. H. Warner as the president of the Seven Stars Gold Mining Company.

*Evidence:* Abst. 202–203.

524 38. That during the time the proof-sheets of the American and English prospectuses were in preparation in the office of the Seven Stars Gold Mining Company at No. 41 Broadway, New York city, and while the same were engrossing the entire attention of the force in said office, the said defendant, Wells, visited said office and had an interview with Warner, the president of the Seven Stars Gold Mining Company; but Wells testifies that nothing was said about the affairs or plans of the company, and that is all the testimony as to the nature of the interview.

*Evidence:* Wells, Abst. 236; Herbert, Abst. 161: "The prospectus was engrossing the attention of practically the whole office at that time."

39. During the time the proof-sheets of the American and English prospectuses were in preparation in the office of the Seven Stars Gold Mining Company at No. 41 Broadway, New York city, and while the same were engrossing the entire attention of the said office, and Mr. Warner was giving practically his entire time to the matter, the defendant Lawler was in New York for five days or more. He arrived August 30, 1892. Lawler while in New York was the guest of Warner. He spent a large part of every day in the office of the company, and was with Warner and his associates during practically his entire visit.

*Evidence:* Warner, 127, 129; Herbert, 161; Earl, 155; Kennard, 141; Lawler, 223; telegrams, Abst., 127; letter of Lawler, Abst. 199.

40. Lawler while in New York was consulted freely by Warner and his associates in regard to the mines, and his accurate knowledge of their history and condition *were* extensively drawn
525 upon in the preparation of the prospectus, Lawler making suggestions and alterations regarding the prospectus.

*Evidence:* Same as preceding. Kennard, 141, 143, 147, 148; Warner, 126, 137.

41. Proof-sheets of the prospectuses were read over to Lawler in the office of the Seven Stars Gold Mining Company and he stated he was well pleased with them.

*Evidence:* Kennard, 141: "Lawler saw the original draft of the prospectus and expressed himself as well pleased with it. * * * (Cross-ex.) I know that Lawler had knowledge of the preparation and printing of prospectus; that Lawler was in New York during the time that prospectus was being prepared; that he saw typewritten copies and printer's proof of prospectus; that he was consulted regarding facts set forth in prospectus; that he was well pleased with the facts as so stated; that he made suggestions and amendments to same." (Abst. 148.)

42. Lawler while in New York saw the map which was circulated with the prospectuses in America and England.

*Evidence:* Kennard, 143: "The lithographed map was being printed while Lawler was in New York, and he saw completed proofs of same, which he knew were intended to accompany the prospectus for distribution." Herbert, 161.

43. Lawler while in New York knew that the map, milling receipts and reports furnished Warner by himself and Wells were being used as the basis of the prospectuses.

*Evidence:* Warner, 126, 127, 128, 129, 137; Footner, 152; Herbert, 161.

44. Warner stated to Lawler while the latter was in New
526 York that before he permitted the prospectuses to go out, he wished to have in his possession the original smelter's returns, copies of which had been previously furnished him by Lawler and Wells, and Lawler then promised to send said original smelter returns upon reaching Prescott, which he subsequently did.

*Evidence:* Kennard, 148; Warner, 126; telegram of September 24, 1892, Abst. 127; letter of Lawler, Abst. 199.

45. While in New York Lawler became aware of the intention of Warner to widely circulate the American prospectus and the English prospectus and to advertise the stock for sale in the newspapers, and that Warner was proceeding as rapidly as possible with the idea, known to Lawler, of realizing money from the sale of stock to meet the deferred payments on the property falling due about November 1st.

*Evidence:* Kennard, 148; Footner, 150, 154.

46. The Industrial Company sent 50 copies of the American prospectus, map and blank subscriptions, addressed to John Lawler, Burke hotel, Prescott, Arizona, and also copies sent to "Lawler and Wells," Prescott, Arizona.

*Evidence:* This is positively stated by Warner, 130; by Kennard, 144, 148, 149; by Footner, 151, 152; by Earl, 156. Rickard saw prospectuses in hands of Lawler (Abst. 170–171).

47. The defendant Wells received a copy of the American prospectus, map and blank subscription form through the mails in the course of their distribution.

*Evidence:* Wells, Abst. 237–238.

48. The American prospectus, map and subscription form
527 were circulated at Prescott, Arizona, and Hillside, Arizona, to the knowledge of Lawler and Wells.

*Evidence:* Rickard, Abst. 167; Lawler, Abst. 231.

49. Lawler had a copy of the American prospectus in his possession in October, 1892, and also saw a verbatim copy in the New York Herald.

*Evidence:* Rickard, Abst. 170–171.

50. Rickard, who was present at the negotiation of the Cowland contract, had frequent conversations thereafter in Prescott, Arizona, with Lawler and Wells, in which he advised Lawler and Wells of the steps Warner was taking to float the property in New York and London.

*Evidence:* Rickard, Abst. 165. Lawler admits frequent conversations with Rickard (Abst. 228).

51. About October 1st, 1892, Lawler and Wells read in a local paper of Prescott a criticism of the way Warner was floating their property.

*Evidence:* Rickard, 169; Lawler, 231.

52. Lawler and Wells read in the Engineering & Mining Journal of September, 1892, an article criticising Warner's methods in floating the Seven Stars property.

*Evidence:* Rickard, 169.

53. In September, 1892, it was a matter of common knowledge in Prescott among mining men that some such prospectus was being prepared.

*Evidence:* Rickard, 167; letter of Lawler, Abst. 199, as follows: "The Hillside mine is all the go in this place. In fact, it is the only camp."

528 54. Copies of the English prospectus were seen in Yavapai county, Arizona, in October, 1892.

*Evidence:* Armitage, 189.

55. Warner at no time attempted to conceal from Lawler or Wells any of his acts, plans or intentions in the promotion of the property.

*Evidence: Passim.* Rickard, 167; Footner, 154.

56. At Prescott, Arizona, a mining center, the home of defendants Lawler and Wells, the organization of the Seven Stars Company, the operation of mines in its name, the circulation of the prospectus in the United States and England, and the general subscription for stock thereon, became common knowledge among persons interested in mining matters, as the same severally occurred.

*Evidence:* Letter of Lawler, Abst. 199; Rickard, 167: "The mine was considered a particularly good one by those who had knowledge of it, and its flotation was pleasantly anticipated by people of Prescott."

57. On October 11, 1892, the Bank of Arizona sent a written request to W. M. Earl, the treasurer of the Industrial Company, for some prospectuses of the Seven Stars Gold Mining Company, and a number were shortly thereafter sent to the Bank of Arizona in pursuance of such request.

*Evidence:* Letters, Abst. 202; Kennard, 144; Hedges, 158; Hazeltine, 242.

58. Some time prior to July 25, 1893—the exact time being un-

certain from the evidence—the defendant Lawler heard one
529 Sutherland making favorable mention of the Seven Stars mines to persons intending to buy stock in the company.

*Evidence:* Letter of Lawler, Abst. 207.

59. Early in the history of the enterprise T. A. Rickard, to the knowledge of Lawler and Wells, became disgusted with the manner in which Warner was promoting the property and abandoned his connection with the company.

*Evidence:* Rickard, 166.

60. On June 12, 1893, Lawler wrote Warner that the public at Prescott had lost confidence in the credit and standing of the company from the manner in which the property had been handled and managed in the past year.

*Evidence:* Letter, Abs. 206–207.

61. On May 20, 1893, Lawler received written notice that the delay in remittances from the company was due to the low price of silver and hard times interfering with the sale of stock of the company.

*Evidence:* Letter, Abs. 242.

62. Hedges while in Prescott, in April, 1893, and Kennard, while in Prescott, May, 1893, informed Wells of the wide sale of stock of the Seven Stars Gold Mining Company.

*Evidence:* Wells, Abs. 238; Lawler, Abs. 225; Hedges, Abs. 171.

63. On May 11, 1893, John Lawler, to the knowledge and with the consent of Wells, was appointed manager of the mining company for and on behalf of the Seven Stars Gold Mining Company, by its president, under a resolution of its board of directors,
530 and on May 1st, 1893, he accepted said appointment, and, as manager, began the discharge of his duties.

*Evidence:* This is undisputed.

64. About May 12, 1893, Lawler and Wells accepted, as a consideration for the extension of payments made at that time, certificates for $50,000.00 of the stock of the Seven Stars Gold Mining Company, which certificates showed upon their face that a large number of other certificates had been previously issued.

*Evidence:* This is undisputed.

65. John Lawler as manager, to the knowledge and with the consent of Wells, took possession of the said mining property for and on behalf of the Seven Stars Gold Mining Company, discharged and hired men, supervised the accounts, directed application of the proceeds of the shipments, purchased supplies, made reports to New York office, and in all things acted as manager for the company in Arizona from May 13, 1893, until he asserted adverse possession for himself and Wells about September 10, 1893.

*Evidence:* Undisputed. Letters, Abst. 205, 206, 207.

66. At all times herein mentioned the officers of the Seven Stars Gold Mining Company and of the Industrial Mining & Guaranty Company had actual knowledge of the true state of the title to the said mining property.

*Evidence:* This is undisputed.

67. That the defendants John Lawler and Ed. W. Wells, or either of them, or any person in their, or either of their, behalf, did not at any time protest against the preparation or circulation of the prospectuses, maps and applications for subscriptions to stock
531 herein mentioned, and did not at any time, or at all, attempt in any way to give any notice of their rights in the said mining property to any of the purchasers of stock of the Seven Stars Gold Mining Company, or to any of the persons dealing with said company, or to give notice to the public by any public announcement of any kind, excepting such notice as arises from the recorded title in said defendants of the property in controversy, as in finding one herein set out.

*Evidence:* This is undisputed.

68. These plaintiffs and others in like estate were ignorant of all facts showing or tending to show that the Seven Stars Gold Mining Company was not the owner of said mines and mining properties, and they believed that said company was such owner until shortly before the commencement of this suit. Likewise they had no knowledge that the Seven Stars Gold Mining Company was not receiving the entire proceeds of the operation of the property, and had no knowledge that any payments were being made to Lawler or Wells or any other person on account of the property.

*Evidence:* This is undisputed.

69. On May 11, 1893, defendant John Lawler was, by the board of directors of the Seven Stars Gold Mining Company, appointed a director of said corporation to fill a vacancy then existing; that said Lawler never entered upon the duties of said office and had no knowledge or notice of said appointment until long after the commencement of this suit.

*Evidence:* Footner, Abst. 153.

70. Defendant Lawler testified that he was "utterly indifferent" as to the prospectus.

*Evidence:* Lawler, Abst. 232.

532 71. The proceeds from the sale of stock were received as follows: $123,852.33 was received from the English subscribers, in various remittances as the stock was sold, the London agent remitting the net proceeds of the sale direct to the Industrial Company. In September, 1892, $2,243.00 was received from the American subscribers; in October, 1892, $57,643.88; in November, 1892, $36,648.54; in December, 1892, $17,046.50; in January, 1893, $10,190.02; in February, 1893, $1,377.75; in March, 1893, $2,144.53;

in April, 1893, $1,177.00; in May, 1893, $70.30, and June, 1893, $500.00.

*Evidence:* Statement and evidence of Footner. Abs. 196-197.

72. The entire proceeds from the sale of stock, upon receipt were deposited in the general bank account of the Industrial Company and by checks and drafts against this bank account the Industrial Company paid out on behalf of the Seven Stars Gold Mining Company the $112,339.86 to Lawler and Wells, and the cost of operation and machinery, and the general business expenses of the Seven Stars Mining Company. In addition to the said $112,339.86 the Industrial Company paid $112,411.32 for costs of operation, improvements, supplies and machinery while the Seven Stars Gold Company was in possession of the mines.

*Evidence:* Defendants' statement prepared by Wood, Abs. 244.

73. The Seven Stars Gold Mining Company had no property other than its interest in the said mines, and had no source of income other than the sale of its stock.

*Evidence:* This is undisputed.

74. That from the gross proceeds of the operations of the
533 Hillside group of mines during its operations by the Industrial and Mining Guaranty Company, there was deposited in the Bank of Arizona to the credit of Lawler and Wells on account of the purchase price of said property, in accordance with the terms of said escrow agreement, "Exhibit A" aforesaid, the sum of $19,987.61; that during the operations of said properties by the Seven Stars Gold Mining Company a like deposit was made for a like purpose, amounting to the sum of $47,812.25; aggregating in all $67,799.86.

*Evidence:* These facts are undisputed.

75. That on May 12 and 24, 1892, H. H. Warner paid to the defendants, Lawler and Wells, on account of the purchase price of said property, the aggregate sum of $51,000; that there was paid on and between November 12, 1892, and August 4, 1893, to the defendants, John Lawler and Ed. W. Wells, by the Industrial Company on account of the purchase price of said property under the terms of the original escrow agreements, "Exhibit A" aforesaid, and the amendments, "I" and "K" aforesaid, the aggregate sum of $112,399.96; and said sum was credited to Lawler and Wells on the books of the Bank of Arizona on the dates and in the amounts as follows, to wit:

| | |
|---|---|
| Nov. 12, 1892, Bank of Arizona | $35,000 |
| Nov. 12, 1892, Park nat. bank, New York | 23,500 |
| Dec. 9, 1892, Bank of Arizona | 7,000 |
| Dec. 9, 1892, Bank of Arizona | 12,500 |
| Dec. 9, 1892, Bank of Calif., San Francisco | 12,500 |
| Dec. 9, 1892, Bank of Calif., San Francisco | 4,500 |
| Feb. 11, 1893, Laidlaw & Co., New York | 4,500 |

| | | |
|---|---|---|
| | Feb. 11, 1893, Bank of Arizona | 1,639.96 |
| 534 | June 3, 1893, Laidlaw & Co., New York | 4,500 |
| | June 5, 1893, Laidlaw & Co., New York | 2,200 |
| | Aug. 4, 1893, Bank of Arizona | 4,500 |

*Evidence:* These facts are undisputed.

76. That during the life of the Industrial and Mining Guaranty Company it was engaged in promoting sundry mining, railroad and industrial enterprises, including the business transactions of the Seven Stars Gold Mining Company; that during the time it received and disbursed the sum of $824,142.13; that from June 15, 1892, to and including August 1, 1893, all of the money which it received and disbursed on account of its various enterprises were deposited in its name in a common fund in the Continental National Bank of New York, and checked against, disbursed and used by said Industrial and Mining Guaranty Company in its various business enterprises as such enterprises required, excepting the sum of $111,724.23, of which sum $67,799.86 were the gross proceeds of ore mentioned in finding 43, and the further sum of $43,924.37, which was composed of $224.37, moneys received prior to May 11, 1893, from the sale of Seven Stars stock, and the remainder from loans obtained by said company, subsequent to May 11, 1893.

*Evidence:* These facts are undisputed.

77. No certificates of stock of the Seven Stars Gold Mining Company were ever issued on account of the stock subscriptions made in England.

*Evidence:* Undisputed.

535 78. The Industrial Company looked constantly to the receipts from the sale of stock out of which to make the payments for the property and its operation.

*Evidence:* Footner, Abst. 150: "The main enterprise of the Industrial Company was the formation of the Seven Stars Company, which was formed by them in 1892, to sell the stock of the company, and by the sale of such stock to liquidate their indebtedness on the mining properties in Arizona. * * * All the money received from the purchase of this stock was remitted to the vendors of the mines."

Herbert, 159: "The purpose was to form the Seven Stars Company and to offer its stock for public subscription. I had no doubt that the subscriptions would be so large that they would enable us to pay for the mine. * * * There was money paid to Lawler and Wells out of the subscription moneys received from the stock of the Seven Stars Company."

Kennard, 146: "All of the moneys derived from the sale of the shares of stock of the Seven Stars Company were also paid to Lawler and Wells, except such as were expended for the purpose of actually mining the ore and for commissions to brokers for selling the stock."

Warner, 134: "I know that Lawler and Wells were cognizant of the fact * * * that payments were being deferred for the purpose of receiving money from subscription to the stock * * * and said Lawler and Wells never, by word of mouth, writing, or in any manner, manifested any objection or made any protest against the procedures entered into by the different companies for obtaining the money."

79. Lawler and Wells had actual notice from the beginning that the Industrial Company was the agent of the Seven Stars Gold Mining Company to circulate the prospectus, sell the stock, and make the payments therefrom for the property and its operation as herein found.

*Evidence:* Undisputed.

536 80. The Bank of Arizona had actual notice that the Industrial Company was the agent of the Seven Stars Gold Mining Company to circulate the prospectus, sell the stock, and make the payments therefrom for the property and its operation as here found.

*Evidence:* Undisputed.

81. All payments and shares of stock received by Lawler and Wells have been retained by them.

*Evidence:* This is undisputed.

82. One of the plaintiffs, Clinton B. Wiser, was elected a director of the Seven Stars Gold Mining Company and his name appeared on the prospectus as such director, and he assisted in the circulation of the prospectus and the sale of the stock thereon in Chicago, Illinois; but said Wiser was not informed that the company did not own the mines, and he believed from reading the prospectus and examining the map that it was the owner, and upon that belief invested in stock of the company, and had no knowledge that the company did not own the property until about May 13, 1893.

*Evidence:* Undisputed testimony of Wiser, Abst. 192–193.

83. On and between January 18, 1893, and May 10, 1893, the Industrial Mining Guaranty — paid out as and for dividends on stock sold of the Seven Stars Gold Mining Company the sum of $11,533.07 to the then various holders of the capital stock of the Seven Stars Gold Mining Company; which dividends were represented to have been paid out of the proceeds of the mines.

*Evidence:* This is undisputed.

537 84. That on September 1st, 1893, or at any time since then, said Charles Cowland, or the said receiver, or the plaintiffs, or any one of them, has not and have not paid or offered to pay, to said defendants, John Lawler and Ed. W. Wells, the sum of $4,500.00 payable on that date under the terms and provisions of the written instrument "Exhibit A," attached to said answer, and said sum or

any part thereof has not at any time since then been paid by said Cowland, and that said Cowland, or any one for him has not paid, or caused to be paid, or offered to pay, any portion of any of the purchase-money of said property falling due or payable on or after the first day of September, 1893, according to the terms of the original escrow agreement "Exhibit A," or the amendments thereof.

*Evidence:*

85. At a meeting held on April 4, 1894, at which there were present about 350 of the stockholders, these plaintiffs were authorized and directed to bring suit on behalf of themselves and all others in like estate; that said defendant Griffin, receiver as aforesaid, was then present, and demand was made upon him by plaintiffs to institute suit against Lawler and Wells, which said receiver refused to do.

86. That the stockholders, nor any one of them, did not before the commencement of this suit return, or offer to return, to the Seven Stars Gold Mining Company his stock, or any part thereof; and said stockholders, nor any one of them, did not, prior to the commencement of this action, return, or offer to return, his or their portion of the dividends received by him or them from the Industrial and Mining Guaranty Company.

*Evidence:* This is undisputed.

538 87. That between the 17th day of November, 1893, and the time of commencing this action, the plaintiffs, or said receiver, or any one for them, or either of them, did not make any demand upon said John Lawler and Ed. W. Wells, or either of them, for the possession of the properties in controversy herein, or any part thereof.

*Evidence:* This is undisputed.

T. W. JOHNSTON AND
KRETZINGER, GALLAGHER &
ROONEY, *For Appellants.*

539 No. 651.

In the Supreme Court of the Territory of Arizona.

In the District Court of Yavapai County, Arizona.

CLINTON B. WISER ET AL., Plaintiffs,
*vs.*
JOHN LAWLER ET AL., Defendants. } Findings of Fact.

G. W. Kretzinger, M. A. Gallagher, T. W. Johnston, attorneys for plaintiffs.

Herndon & Norris, J. F. Wilson, E. M. Sanford, attorneys for Lawler and Wells.

Filed January 23, 1899.
LLOYD JOHNSTON, *Clerk.*

540 In the District Court of Yavapai County, Arizona.

CLINTON B. WISER ET AL., Plaintiffs,
*vs.*
JOHN LAWLER ET AL., Defendants.
} Findings of Fact.

This cause came on for trial on the 1st day of November, 1898, before the court, without a jury, and thereupon the plaintiffs, to maintain the issues on their part joined, introduced evidence and rested; and thereupon defendants, John Lawler and Ed. W. Wells, introduced evidence to support the issues on their part joined, and rested; and after hearing the evidence and proofs produced and the arguments of counsel, the court now finds as facts herein the following, to wit:

1. That on the 12th day of May, 1892, ever since, and now, the defendants, John Lawler and Ed. W. Wells, were and are the owners of the legal title to the mines and mining claims more particularly described in the pleadings herein, and hereby denominated and hereinafter referred to as the Hillside group of mines. The monuments of title showing such ownership in said Lawler and Wells were then, ever since have been, and are now of record in the office of the county recorder of the county of Yavapai, Territory of Arizona, in which said county said mines were and are now situate; that John Lawler and Ed. W. Wells were and are cotenants in said group of mines, the said Lawler owning an undivided three-fourths interest therein, and the said Wells owning an undivided one-fourth interest therein.

2. That shortly prior to May 12, 1892, the defendants, John Lawler and Ed. W. Wells, offered said mines for sale at the purchase price of four hundred and fifty thousand dollars ($450,000), cash.

3. That some three or five days previous to May 12, 1892,
541 H. H. Warner, accompanied by one T. A. Rickard, a mining expert, visited this group of mines, and made an examination of the same. After such examination, they returned to Prescott, Arizona, and there entered into negotiations with Lawler and Wells for the purchase of said property, and as a result of such negotiations the purchase price of said property was fixed at four hundred and fifty thousand dollars ($450,000), payable twenty thousand dollars ($20,000) in cash and the remainder payable in installments in accordance with the terms of an escrow agreement on May 12, 1892, entered into by and between John Lawler and Ed. W. Wells on the one part, and Charles Cowland on the other part, a true copy of which is attached to the answer of Lawler and Wells, filed September 13, 1897, to the amended complaint, and marked 'Exhibit A;" that contemporaneously with the execution of said escrow agreement a deed was signed by the grantors therein named, to wit: John Lawler, Ed. W. Wells, and Rosa Wells, as the wife of the said Wells, and therein said Charles Cowland was named as grantee, and in said deed the consideration was fixed at the purchase price of said property, to wit: the sum of four hundred and fifty thousand dollars ($450,000), and further therein the said

Hillside group of mines was particularly described, a true copy of which said deed is attached to said answer and marked "Exhibit B;" that contemporaneously with the signing of said escrow agreement and deed, the said H. H. Warner signed an instrument in writing, a true copy whereof is attached to said answer and marked "Exhibit C;" that afterwards and on the 12th day of May, 1892, the original of said escrow agreement, "Exhibit A," the original of said deed, "Exhibit B," and the original of said instrument in writing signed by H. H. Warner, "Exhibit C," were by the said Warner, John Lawler and Ed. W. Wells deposited in the Bank of Arizona at Prescott, Arizona, as the escrow holder thereof, in accordance with the terms, conditions and provisions contained in said escrow agreement, "Exhibit A."

4. That while the original of said Exhibits "A" and "B" were executed in the name of Charles Cowland, the said Cowland was the agent of said H. H. Warner, and said Warner was the real party in interest in said transaction.

5. The said escrow agreement, "Exhibit A," and deed, "Exhibit B," were never recorded, but remained in the possession of said Bank of Arizona as the escrow holder thereof to and until November 10, 1893.

6. That at the time of the execution of said escrow agreement, "Exhibit A," and said deed, "Exhibit B," the defendants, John Lawler and Ed. W. Wells, knew that H. H. Warner contemplated the forming of a corporation to operate said group of mines
542 and eventually vest the title thereof in said corporation, in compliance with the terms of said escrow agreement.

7. That on or about the 15th day of May, 1892, John Lawler delivered to T. A. Rickard as the agent of Charles Cowland the occupation of said group of mines under the terms and conditions contained in the license embodied in said escrow agreement, "Exhibit A;" that from May 15, 1892, to the 15th day of June, 1892, the funds necessary to carry on the operations of said mines under the administration of said Rickard, were furnished by the H. H. Warner Investment Company, a corporation, of which the said H. H. Warner was during that time the president, the amount of which said funds does not appear in the evidence.

8. That on the 14th day of June, 1892, said H. H. Warner, Wm. M. Earl, Wm. R. Kennard, Francis B. Bowen and Charles Cowland incorporated, under the laws of the State of New Jersey, the Industrial and Mining Guaranty Company, with a capital of five hundred thousand dollars ($500,000), divided into five thousand (5,000) shares of the par value of one hundred dollars ($100) each, and on June 15, 1892, that corporation was organized with said incorporators as directors, with H. H. Warner as president; Wm. R. Kennard, vice-president; Wm. M. Earle, secretary, and Francis B. Bowen as treasurer.

9. That on the 15th day of June, A. D. 1892, said Charles Cowland made and delivered to the Industrial and Mining Guaranty Company a written assignment of all his right, title and interest in and to the escrow agreement, "Exhibit A" aforesaid, a true copy of

which said written assignment is attached to said answer and marked "Exhibit D:" that contemporaneously with the execution and delivery of said written assignment, "Exhibit D," the said Charles Cowland made and delivered to said Industrial and Mining Guaranty Company a deed of conveyance, a true copy of which said conveyance is attached to said answer and marked "Exhibit F;" that contemporaneously with the execution and delivery of said assignment, "Exhibit D," and said conveyance "Exhibit F," the said H. H. Warner made and delivered to said Industrial and Mining Guaranty Company a written consent to the making of said assignment and deed, Exhibits "D" and "F," a true copy of which said written consent is attached to said answer and marked "Exhibit E;" that at the time the said Industrial and Mining Guaranty Company took and received said assignment, "Exhibit D," said written consent, "Exhibit E," and said conveyance, "Exhibit F," from the said Charles Cowland, to wit: on June 15, 1892, the said Industrial and Mining Guaranty Company had full knowledge and notice
543 of the terms, conditions and provisions of the escrow agreement, "Exhibit A," aforesaid, and then and there by resolution of the board of directors of said Industrial and Mining Guaranty Company, the said Industrial and Mining Guaranty Company assumed all the covenants, conditions and agreements in the said escrow agreement, "Exhibit A," aforesaid on the part of said Charles Cowland to be kept and performed, and further, by said resolution, said Industrial and Mining Guaranty Company promised to carry out and perform said escrow agreement, "Exhibit A," and all the terms, conditions and covenants therein contained, on the part of said Cowland to be performed, and make the payments for said mines, mining properties and other goods and chattels provided for in said escrow agreement, "Exhibit A," and procure said deed for the same, then in the hands of the Bank of Arizona.

10. That on the 15th day of June, 1892, the said T. A. Rickard delivered to the Industrial and Mining Guaranty Company the occupation of said Hillside group of mines, and on that day the said company entered into occupation of said group of mines with full knowledge and notice of the terms, conditions and provisions of the escrow agreement, "Exhibit A," aforesaid; that said company remained in occupation and operation of said Hillside group of mines from June 15, 1892, to and until the 1st day of October, 1892.

11. That on the 15th day of August, 1892, said H. H. Warner, William M. Earle and one Robert S. Hudspeth, as incorporators, procured a certificate of incorporation of the Seven Stars Gold Mining Company under the laws of the State of New Jersey, with a capital of three million dollars ($3,000,000), divided into six hundred thousand (600,000) shares of five dollars ($5) each, wherein, among other things, said corporation was authorized to hold, operate and convey mines; that afterwards and on the 24th day of September, 1892, the said Seven Stars Gold Mining Company was organized by the election of the following-named directors, to wit: Warner Miller, Hulbert H. Warner, J. Clifford Richardson, J. Herbert Jefferis, Arthur G. Yates, John W. Vrooman,

B. E. Chase, Clinton B. Wiser and Robert S. Hudspeth; with H. H. Warner as president, Robert S. Hudspeth as vice-president, and Harold J. Footner as secretary and treasurer.

12. That on the 10th day of September, 1892, the Industrial and Mining Guaranty Company, through its board of directors, by a resolution duly adopted, did offer to sell and convey all its right, title and interest in the following mining properties, a portion of which are described in the escrow agreement and deed, Exhibits "A" and "B" aforesaid, to wit: the Seven Stars, Happy Jack,
544 Contact No. 1 and Contact No. 2 mines; also the claim known as Camp, and the locations known as Mescal, Elwood, Midnight, Waterfall and Boulder, and all its right, title and interest in the 180 acres of land at Camp Wood, including town sites and water rights, to a company formed or to be formed and known as the Seven Stars Gold Mining Company, upon said company showing that it had placed two hundred thousand dollars ($200,000) for working capital and upon receiving two million eight hundred thousand dollars ($2,800,000) in cash or stock of the Seven Stars Gold Mining Company, and by said resolution the officers of said company were instructed and empowered to sign the necessary contracts and to deliver deeds of the same upon compliance with said conditions.

13. That on the 1st day of October, 1892, the Industrial and Mining Guaranty Company placed the Seven Stars Gold Mining Company in the occupation of said Hillside group of mines, and on that day the latter company entered into said occupation with full knowledge and notice of the terms, conditions and provisions contained in the escrow agreement, "Exhibit A," aforesaid, and with full knowledge and notice of the resolution of the board of directors of the Industrial and Mining Guaranty Company referred to in finding 12 herein.

14. That the Industrial and Mining Guaranty Company, acting as the duly authorized agent of the Seven Stars Gold Mining Company, under date of September 24, 1892, issued a prospectus known as the "American prospectus," in aid of and to promote the sale of the stock of the Seven Stars Gold Mining Company, a true copy of which said prospectus is attached to the original complaint herein and marked "Exhibit C;" that — some 300,000 of said "American prospectus," accompanied by a map and application for subscription to stock, copies of which are attached to the original complaint and likewise marked "Exhibit C," the circulation of which said prospectus commenced about the 20th of September, 1892.

15. That on October 3, 1892, the Industrial and Mining Guaranty Company, as the duly authorized agent of the Seven Stars Gold Mining Company, by a resolution of the board of directors of said Industrial and Mining Guaranty Company duly adopted, did authorize and direct an English prospectus to be issued, a true copy of which said prospectus is attached to the minutes of the Industrial and Mining Guaranty Company under date of October 3, 1892, and contained in "Exhibit 73," attached to the deposition of John Griffin on file herein; that the prospectus in this paragraph mentioned was never circulated in England or elsewhere.

16. That a prospectus was issued and circulated in England
545 without the authority of the board of directors of the Industrial and Mining Guaranty Company or of the Seven Stars Gold Mining Company, a true copy of which said prospectus so circulated in England is attached to the original complaint herein and marked "Exhibit D;" this prospectus was prepared, supervised and circulated by Charles Cowland. The descriptive matter in this prospectus was based upon data furnished him by the officers of the Industrial and Mining Guaranty Company; the circulation of this prospectus commenced about the 5th day of October, 1892, and amounted to about 80,000 copies; accompanying each copy of this prospectus was a map and application for subscription for stock, true copies of which are attached to the original complaint herein and marked "Exhibit C;" neither John Lawler nor Ed. W. Wells had any knowledge or information that this prospectus had been or was being circulated in England or had any knowledge or notice of its contents until some time in the month of October, 1893.

17. That on May 15, 1892, at the Hillside mines, the defendants, Lawler and Wells, caused to be delivered to Mr. T. A. Rickard, a report previously made upon said mines, known in the evidence as the "Blauvelt report," together with a map of the underground workings of said mines as such workings then existed, known in the evidence as the "Blauvelt map;" also copies of the smelter and milling returns of ores which had been previously shipped from said mines and reduced, known in the evidence as "Smelters' returns;" that on September 28, 1892, at the request of H. H. Warner, said John Lawler sent by express to H. H. Warner at New York city, the originals of said smelter and milling returns.

18. That on August 27, 1892, defendant Wells visited the office of the Industrial and Mining Guaranty Company, at 41 Broadway, New York city, and while there had an interview with H. H. Warner, president of that company and of the Seven Stars Gold Mining Company; that during that interview nothing was said to Mr. Wells about the plans of the Seven Stars Gold Mining Company or of the Industrial and Mining Guaranty Company, or the issuance and circulation of any prospectus.

19. That the section of the underground workings shown upon the map accompanying the prospectus and being one of the "Exhibits C" attached to the original complaint, is a copy of the Blauvelt map with the additions of the outlines of the underground workings made by T. A. Rickard as the agent of Cowland during his administration and by the Industrial and Mining Guaranty Company during its operations of said property; that the original of the surface outlines of the mining claims and
546 town site appearing upon said map, "Exhibit C," was prepared by Alexander O. Brodie while in the employ of the Industrial and Mining Guaranty Company, and without the knowledge of Lawler and Wells; that the original Brodie map contained the outlines of all the mining claims described in the escrow deed, "Exhibit B," together with other mining claims bonded by said Industrial and Mining Guaranty Company, and located by

said Brodie for the benefit of the Seven Stars Gold Mining Company; that the said map, "Exhibit C," contains an outline of only those mining claims and town site mentioned in the resolution of the Industrial and Mining Guaranty Company, dated September 10, 1892, and referred to in finding 12 herein, together with the Boulder, a claim bonded from Joe Howell, and claims located by Mr. Brodie for the benefit of the Seven Stars Gold Mining Company; and, together with the Hillside patented claims mentioned in said escrow deed, Exhibit "B;" that defendant Lawler, on his visit to New York, August 30, 1892, saw the original Brodie map hanging on the wall of the office of said companies in New York; that the original Brodie map of which defendants' map, "Exhibit A" in evidence is a true copy, had endorsed thereon the words, to wit: "Plat of the Hillside and adjoining claims;" and, said quoted words were written upon the original draft of the distributed map, "Exhibit C," attached to the complaint; that at the request of some of the officers of the Industrial and Mining Guaranty Company, said quoted words were, before distribution, changed by the lithographers upon said distributed map, "Exhibit C," to the words, to wit: "Map of the group of mines belonging to the Seven Stars Gold Mining Company."

20. That on and between the 30th day of August, 1892, and the 3d day of September, 1892, the defendant, John Lawler was in the offices of the Industrial and Mining Guaranty Company in New York city and there became aware that an American prospectus was being prepared for circulation for the purpose of promoting the sale of the stock of the Seven Stars Gold Mining Company, and, that the facts and statements contained in the Blauvelt report and map and copies of smelters' returns, hereinbefore mentioned, were being used as a basis of the description of the said Hillside group of mines to be contained in said proposed American prospectus.

21. That on October 28th, 1892, said H. H. Warner was at Prescott, Arizona, and there represented to John Lawler and Ed. W. Wells that he was unable to place securities which he held, without great sacrifice, in time to meet the payment of a portion of the purchase price falling due November 12, 1892; that relying upon said representations and upon the request of said H. H.
547 Warner, the defendants John Lawler and Ed. W. Wells, under date of October 28, 1892, executed the instrument in writing attached to said answer and marked "Exhibit I."

22. That on May 8, 1893, H. H. Warner executed a general assignment of his property for the benefit of his creditors to Job E. Hedges.

23. That on May 11, 1893, the defendants Lawler and Wells, then knowing of the assignment in finding 22 set forth, and said Charles Cowlan executed an instrument in writing, a true copy whereof is attached to said answer and marked "Exhibit K," wherein and whereby it was stipulated that the payment mentioned in the original escrow agreement, "Exhibit A" aforesaid, as falling due on May 12, 1893, may be made by said Cowland as follows: $9,098 in cash, $4,500 to be paid in cash to said Lawler and Wells at said

Bank of Arizona on the first day of June, 1893, and a like sum on the first day of each of the following months, viz: July, August, September, October and November, 1893.

24. That a part of the consideration for the execution of the written instrument "Exhibit K" attached to said answer, was the issuance and delivery to said defendants Lawler and Wells, of $50,000 par value of the guaranteed capital stock of the Seven Stars Gold Mining Company and of the appointment of John Lawler as manager of the operations of said Hillside group of mines.

25. That on May 11, 1893, the defendant, John Lawler, was appointed by the Seven Stars Gold Mining Company, manager of the operations of said Hillside group of mines, and said defendant, John Lawler, on May 13, 1893, entered upon his duties as such manager.

26. That on the 18th day of August, 1893 the chancery court of the State of New Jersey, in a certain action for that purpose then pending in said court, duly appointed defendant, John Griffin as receiver of said Industrial and Mining Guaranty Company and of the Seven Stars Gold Mining Company, and thereupon, on that day the said John Griffin duly qualified and entered upon his duties as such receiver.

27. That the Seven Stars Gold Mining Company from and including October 1, 1892, until and including the 17th day of August, 1893, continuously occupied and operated the said Hillside group of mines under and by virtue of the occupation thereof so given to it, by the Industrial and Mining Guaranty Company as aforesaid, with full knowledge and notice of the terms, conditions, privileges and provisions contained in the original escrow agreement, "Exhibit A" aforesaid.

28. That on September 1, 1893, or at any time since then,
548 said Charles Cowland or the said receiver or the plaintiffs or any one for them has not and have not paid or offered to pay to said defendants, John Lawler and Ed. W. Wells, the sum of $4,500 payable on that day under the terms and conditions of the written instrument, "Exhibit K," attached to said answer, and said sum or any part thereof has not at any time since then been paid by the said Cowland; and that said Cowland or any one for him has not paid, or caused to be paid, or offered to pay any portion of any of the purchase-money of said property falling due or payable on or after the first day of September, 1893, according to the terms of the original escrow agreement, "Exhibit A," or the amendments thereof.

29. That on the 10th day of September, 1893, the defendants, John Lawler and Ed. W. Wells, as owners of the legal title to the said Hillside group of mines, and claiming to exercise their rights under the original escrow agreement, "Exhibit A" aforesaid, and the amendments, "Exhibits I and K" attached to said answer, entered into possession of said Hillside group of mines and from thenceforward to and until September 30, 1897, the day of the date of the appointment of the first receiver herein, continuously remained in the exclusive possession of said mines.

30. That on the 10th day of November, 1893, said Bank of Arizona, as the escrow holder of said deed, "Exhibit B" aforesaid, at the request of defendants, John Lawler and Ed. W. Wells, redelivered said deed, "Exhibit B" aforesaid, to the defendants, John Lawler and Ed. W. Wells.

31. That the defendants, John Lawler and Ed. W. Wells, had no knowledge or notice of the execution by Charles Cowland to the Industrial and Mining Guaranty Company, of the written assignment, "Exhibit D," the conveyance, "Exhibit F," the written consent thereto of H. H. Warner, "Exhibit E" and the resolution of the Industrial and Mining Guaranty Company accepting said instruments, as mentioned and described in finding 9 herein, until after the commencement of this suit.

32. That defendants, John Lawler and Ed. W. Wells had no knowledge or notice of the adoption of the resolution of the Industrial and Mining Guaranty Company dated September 10, 1892, offering to sell a portion of the property in controversy with other property, to a company formed or to be formed and known as the Seven Stars Gold Mining Company and more particularly described in finding 12 herein, until after the commencement of this suit.

33. That on the 11th day of May, 1893, defendant John Lawler was, by the board of directors of the Seven Stars Gold Mining Company, appointed a director of said corporation to fill a vacancy
549 then existing; that said Lawler never entered upon the duties of said office and had no knowledge or notice of said appointment until long after the commencement of this action.

34. That defendants John Lawler and Ed. W. Wells in the month of October, 1892, became aware that the American prospectus, "Exhibit D" to the original complaint, was being distributed by the Industrial and Mining Guaranty Company.

35. That the defendants John Lawler and Ed. W. Wells or either of them or any person in their or either of their behalf did not at any time protest against the preparation or circulation of the prospectuses, maps and applications for subscriptions to stock herein mentioned, and they did not at any time or at all attempt in any way to give any notice of their rights in the Hillside group of mines to any of the plaintiffs or purchasers of the stock of the Seven Stars Gold Mining Company, except as such notice might be imputed to the said plaintiffs and stock purchasers through and by virtue of the recorded title in said defendants of the property in controversy, as in finding 1 herein set out.

36. That plaintiff, Clinton B. Wiser, was a director of the Seven Stars Gold Mining Company, and his name appeared on the prospectus as such director, and he assisted in the circulation of the American prospectus and in the sale of the stock of that corporation, and during all that time he had knowledge and notice that the title to the property in controversy was not vested in the Seven Stars Gold Mining Company.

37. That the Seven Stars Gold Mining Company duly authorized the Industrial and Mining Guaranty Company to act as its agent in the sale of stock, and all of the stock of the Seven Stars Gold

Mining Company which was at any time sold under the American prospectus was so sold by the Industrial and Mining Guaranty Company, and the latter received from the stock purchasers all the moneys which were paid on account of the purchase price of such stock.

38. That as to stock sold under the American prospectus to American stock purchasers, every contract of sale and purchase of stock of the Seven Stars Gold Mining Company was conducted by the Industrial and Mining Guaranty Company on the one part, as sellers, and by the individual subscriber to said stock as purchaser, on the other part; that as to stock sold under the English prospectus in England, every contract of sale and purchase of said stock was conducted by Tarbutt & Quentin on the one part as sellers, and by the individual subscribers to said stock as purchaser on the other
550 part; and that neither John Lawler nor Ed. W. Wells was present at, or a party to, any of said contracts.

39. That 21 out of a total aggregate numbering about 500 of the purchasers of stock of the Seven Stars Gold Mining Company have testified in this case; and, with the exception of witness Wiser, during all of the time of their and each of their (the said witnesses') dealings with the Industrial and Mining Guaranty Company in the purchase, subscription and payment for such stock:

(*a.*) They each relied upon the statements contained in the prospectus and maps as distributed, and they believed from the reading of the same that the Seven Stars Gold Mining Company owned the mines and properties therein mentioned and referred to.

(*b.*) All of the said witnesses, including witness Wiser, and with the exception of witness M. J. Riordan, did not then know either of the defendants, John Lawler or Ed. W. Wells; and

(*c.*) That said witnesses, including witnesses Wiser and Riordan, did not before, or at the time of their said purchases, subscriptions or payments, have any communication with said defendants, or either of them, concerning any matter in issue herein.

40. That the subscribers to the stock of the Seven Stars Gold Mining Company did not at the time of their individual subscriptions to, or, at the time of their several payments for said stock, have any knowledge or notice of any of the following matters:

(*a.*) That Lawler and Wells on May 12, 1892, knew that H. H. Warner proposed to form a corporation to operate said group of mines and eventually take the title thereto, as in finding 6 herein set forth.

(*b.*) That said defendants had furnished the Blauvelt report and map, or the copies of and original smelters' returns as herein mentioned, or that the same was being, or had been, used as data for said prospectus, and the maps distributed therewith.

(*c.*) That John Lawler and Ed. W. Wells had visited the offices of the Industrial and Mining Guaranty Company, in New York, in August and September, 1892, or of any matter or thing occurring thereat; or,

(*d.*) That said defendants knew that said prospectuses and maps were being distributed.

41. That the subscribers to the capital stock of the Seven Stars Gold Mining Company, in making their several subscriptions therefor and payments thereon, did so without any knowledge of and without relying upon anything said or done, or omitted to be said or done, in the premises by the said Lawler and Wells or either of them.

551 42. That John Lawler and Ed. W. Wells did not before or at the time of any subscriptions to the capital stock of the Seven Stars Gold Mining Company or payment on account of said subscriptions, make any representations to or communicate with any subscriber of said stock concerning any matter or thing in issue herein.

43. That from the gross proceeds of the operations of the Hillside group of mines during its operations by the Industrial and Mining Guaranty Company, there was deposited in the Bank of Arizona to the credit of Lawler and Wells on account of the purchase price of said property, in accordance with the terms of said escrow agreement, "Exhibit A" aforesaid, the sum of $19,987.61; that during the operations of said properties by the Seven Stars Gold Mining Company a like deposit was made for a like purpose, amounting to the sum of $47,812.25; aggregating in all $67,799.86.

44. That on May 12 and 24, 1892, H. H. Warner paid to the defendants, Lawler and Wells, on account of the purchase price of said property, the aggregate sum of $51,000; that there was paid on and between November 12, 1892, and August 4, 1893, to the defendants, John Lawler and Ed. W. Wells, on account of the purchase price of said property under the terms of the original escrow agreements, "Exhibit A" aforesaid, and the amendments, "I" and "K" aforesaid, the aggregate sum of $112,399.96; and said sum was credited to Lawler and Wells on the books of the Bank of Arizona on the dates and in the amounts as follows, to wit:

| | |
|---|---|
| Nov. 12, 1892, Bank of Arizona | $35,000 |
| Nov. 12, 1892, Park nat. bank, New York | 23,500 |
| Dec. 9, 1892, Bank of Arizona | 7,000 |
| Dec. 9, 1892, Bank of Arizona | 12,500 |
| Dec. 9, 1892, Bank of Calif., San Francisco | 12,500 |
| Dec. 9, 1892, Bank of Calif., San Francisco | 4,500 |
| Feb. 11, 1893, Laidlaw & Co., New York | 4,500 |
| Feb. 11, 1893, Bank of Arizona | 1,639.96 |
| June 3, 1893, Laidlaw & Co., New York | 4,500 |
| June 5, 1893, Laidlaw & Co., New York | 2,200 |
| Aug. 4, 1893, Bank of Arizona | 4,500 |

45. That the payments of November 12 and December 9, 1892, and on February 11 and June 5, 1893, were made in the following manner, to wit: The treasurer of the Industrial and Mining Guaranty Company drew a check for each payment on its common fund in the Continental National Bank of New York, which said checks were payable as follows, to wit: "To the order of Charles Cowland or Laidlaw & Company" (or, "to the order of Charles Cowland or the Park national bank," as the case was,) "for telegraphic transfer

to the Bank of California" (or, "the Bank of Arizona" as
552 the case was) "for credit to Lawler and Wells on account of the Cowland contract," which said checks were collected by the payee and the moneys received therefrom, transmitted in the usual course of business to the Bank of Arizona and there placed to the credit of Lawler and Wells on account of the purchase price of said property, in accordance with the terms of the original escrow agreement, "Exhibit A," and the amendments thereof.

46. That during the life of the Industrial and Mining Guaranty Company it was engaged in promoting sundry mining, railroad and industrial enterprises including the business transactions of the Seven Stars Gold Mining Company; that during the time it received and disbursed the sum of $824,142.13; that from June 15, 1892, to and including August 1, 1893, all of the money which it received and disbursed on account of its various enterprises were deposited in its name in a common fund in the Continental National Bank of New York, and checked against, disbursed and used by said Industrial and Mining Guaranty Company in its various business enterprises as such enterprises required, excepting the sum of $111,724.23, of which sum, $67,799.86 were the gross proceeds of ore mentioned in finding 43, and the further sum of $43,924.37, which was composed of $224.37, moneys received prior to May 11, 1893, from the sale of Seven Stars stock, and the remainder from loans obtained by said company, subsequent to May 11, 1893.

47. That the defendants John Lawler and Ed. W. Wells did not at any time, prior to the time of the commencement of this action, have any knowledge or notice that any moneys received by them on account of the purchase price of the Hillside group of mines as provided for and mentioned in the original escrow agreement, "Exhibit A" aforesaid, came from or *was* the moneys or any part of the moneys which any one or more of the purchasers of the stock of the Seven Stars Gold Mining Company had paid in to the Industrial and Mining Guaranty Company on account of the purchase price of such stock.

48. That the defendants Lawler and Wells were not promoters of or in anywise interested in the creation or organization of the Industrial and Mining Guaranty Company or of the Seven Stars Gold Mining Company or in the issuance and sale of the capital stock of either of said companies or in the proceeds thereof.

49. No certificates of stock of the Seven Stars Gold Mining Company were ever issued on account of the stock subscriptions made in England.

50. That after the 11th day of May, 1893, the Industrial and
553 Mining Guaranty Company received the sum of $500 and no more, on account of the sale of Seven Stars stock.

51. That the amount of moneys received by the Industrial and Mining Guaranty Company from the purchasers of guaranteed stock of the Seven Stars Gold Mining Company, was as follows: From the American subscribers, $131,859.52; from the English subscribers, $125,852.33; aggregating $253,128.05, of which $819.08 was

returned by the Industrial and Mining Guaranty Company to certain of the stock subscribers to said guaranty stock, and their stock subscriptions cancelled, making the aggregate of money retained by the Industrial and Mining Guaranty Company from the sale of guaranteed stock, $252,308.97. That there was received by the Industrial and Mining Guaranty Company, $2,583.80 from the sale by it of the common stock of the Seven Stars Gold Mining Company.

52. That on September 28, 1892, the Industrial and Mining Guaranty Company received its first moneys, amounting to $2,100, from the sale of the guaranteed stock, and during its operations of said Hillside group of mines prior to September 28, 1892, it had paid out on account of the operating expenses of said property, the sum of $21,004.50.

53. The Seven Stars Gold Mining Company at its New York office did not keep any books of account of receipts and expenditures of moneys, but all receipts and expenditures of moneys on account of the operations and expenditures of the Industrial and Mining Guaranty Company and the Seven Stars Gold Mining Company during their respective operations of the Hillside group of mines, were kept by the Industrial and Mining Guaranty Company in its own books of account.

54. That the Industrial and Mining Guaranty Company, between the 15th day of June, 1892, and the 18th day of September, 1893, paid out on account of the operating expenses, purchase of machinery, purchase price of the Hillside group of mines, dividends and other expenses—all connected with this enterprise—the aggregate sum of $380,295.81, which amounted to $127,986.84 more than the amount of moneys received by the Industrial and Mining Guaranty Company from the sale of Seven Stars guaranteed stock, and $60,186.98 more than the aggregate amount of moneys received by the Industrial and Mining Guaranty Company from the sale of Seven Stars guaranteed stock, and from the net proceeds of ore from the Hillside group of mines paid into the Bank of Arizona on account of the purchase price of said mines.

55. That during the operations of the Hillside group of mines by the Seven Stars Gold Mining Company, there was expended by the Industrial and Mining Guaranty Company for costs of operations, improvements, supplies and machinery, the sum of $112,411.82.

554 56. That the amount paid on account of machinery purchased and placed upon the Hillside group of mines by the Industrial and Mining Guaranty Company during the operations of the Seven Stars Gold Mining Company was the sum of $12,528.87, of which machinery to the value of $5,000 was sold under judicial sale by creditors of the Seven Stars Gold Mining Company after June 1, 1893.

57. That on and between January 18, 1893, and May 10, 1893, the Industrial and Mining Guaranty Company paid out as and for dividends on stock sold of the Seven Stars Gold Mining Company, the sum of $11,533.07 to the then various holders of the capital stock of the Seven Stars Gold Mining Company.

58. That the stockholders, nor any one of them, did not before the

commencement of this suit, return or offer to return, to the Seven Stars Gold Mining Company his stock, or any part thereof; and said stockholders nor any one of them, did not, prior to the commencement of this action, return or offer to return, his or their portion of the dividends received by him or them from the Industrial and Mining Guaranty Company.

59. That there never was any meeting duly called and held of the stockholders of said Seven Stars Gold Mining Company; that on April 4, 1892, several stockholders representing themselves and about 300 other stockholders, voluntarily met at Jersey City, N. J., and there made demand upon John Griffin, receiver, as aforesaid, to commence this suit, and he refused so to do.

60. That on and between September 10, 1893, and September 30, 1897, John Lawler and Ed. W. Wells received from the operations of said Hillside group of mines the sum of $37,376.86, and disbursed in such operations during that time, the sum of $35,658.93.

61. That between the 17th day of November, 1893, and the time of commencing this action, the plaintiffs or said receiver, or any one for them, or either of them, did not make any demand upon said John Lawler and Ed. W. Wells or either of them, for the possession of the properties in controversy herein, or any part thereof.

555 *Conclusions of Law.*

1. That the execution, and deposit in the Bank of Arizona, of the escrow agreement, "Exhibit A," and deed, "Exhibit B," did not convey to Charles Cowland, his heirs or assigns, or to Charles Cowland, or his agent, any estate in the property described in the said deed, "Exhibit B."

2. That the execution and delivery by Charles Cowland to the Industrial and Mining Guaranty Company of the written assignment, "Exhibit D" attached to the said answer, and the deed of conveyance, "Exhibit F," attached to the answer, had the force and effect of an assignment only, of all his right, title and interest in the escrow agreement, "Exhibit A" aforesaid, and did not convey any estate in the property in controversy to the Industrial and Mining Guaranty Company.

3. That the occupation of the Hillside group of mines by the Industrial and Mining Guaranty Company, and, by the Seven Stars Gold Mining Company was in privity with T. A. Rickard under the occupation given to him by Lawler and Wells, on April 13, 1892, under the escrow agreement, "Exhibit A" aforesaid.

4. That the defendants, Lawler and Wells, were not promoters of or in anywise interested in the creation or organization of the Industrial and Mining Guaranty Company or of the Seven Stars Gold Mining Company or in the issuance and sale of the capital stock of either of said companies or in the proceeds thereof.

5. That there were no contractual relations between Lawler and Wells, or either of them, and any, either, or all, of the purchasers of capital stock of the Seven Stars Gold Mining Company.

6. That no fiduciary relations ever existed between John Lawler

and Ed. W. Wells, or either of them, and any one, more, or all of the purchasers of shares of stock in the Seven Stars Gold Mining Company.

7. That no duty was at any time imposed upon John Lawler and Ed. W. Wells—

To prevent, or attempt to prevent, the circulation and distribution of the prospectuses, maps, and blank applications mentioned in the findings; or,

To prevent, or attempt to prevent, the sales of any shares of stock of the Seven Stars Gold Mining Company; or,

To inform the subscribers, or proposed subscribers to said stock, that they, said Lawler and Wells, were the owners of the legal title to the property in controversy, nor any part thereof.

8. That the purchasers of the capital stock of the Seven Stars Gold Mining Company were not authorized from reading the prospectuses, maps and blank applications distributed, to so construe the same as to believe or conclude therefrom that the legal title to the properties mentioned therein, was vested in the Seven Stars Gold Mining Company.

9. That by the failure of Charles Cowland or any one claiming under him, to make, or cause to be made, the payment of $4,500 falling due September 1, 1893, on account of the purchase price of the property described in said deed, "Exhibit B" aforesaid,
556 under the terms and conditions contained in the original of said escrow agreement, "Exhibit A" and the amendments thereto, "Exhibits F and K" aforesaid, the said Cowland and those claiming under him failed and neglected to exercise the right to perform a material condition of said escrow agreement and amendments thereto aforesaid, and thereby the said escrow agreement and the amendments thereto aforesaid, became ended and determined and of no further force and effect; that immediately thereupon, defendants Lawler and Wells as legal owners of said property, became at once entitled to the sole possession and occupation of said property; and, further, all of the moneys theretofore paid to said Lawler and Wells on account of the purchase price of said property, thereby became and is forfeited to, and was and is, the property of John Lawler and Ed. W. Wells, and they were and are entitled to retain the moneys so paid as liquidated damages for the failure on the part of the said Cowland, or those claiming under him, to comply with the terms and conditions of said escrow agreement and the amendments thereto aforesaid.

10. That the facts proven do not charge John Lawler and Ed. W. Wells, or either of them, with actual or constructive frau

11. That John Lawler or Ed. W. Wells or either of them are not estopped from asserting herein, a forfeiture of the escrow agreement, "Exhibit A" aforesaid, and the amendments thereto aforesaid, and their legal title to, and the right of sole and exclusive occupation of the property in controversy and every part thereof.

12. That the facts proven are not sufficient to charge said property or any part thereof, with a trust, or fasten a lien thereon in favor of the plaintiffs or any of them and those persons, or any of

them who are alleged to be in like estate with the plaintiffs for or on account of moneys, or any part thereof, alleged to have been paid as the purchase price of shares of the capital stock of the Seven Stars Gold Mining Company.

14. That the facts proven are not sufficient in law to charge said property or any part thereof with a trust, or fasten a lien thereon in favor of the plaintiffs or any of them and those persons, or any of them who are alleged to be in like estate with the plaintiffs for or on account of any moneys, or part thereof, paid, laid out or expended by or on behalf of the Seven Stars Gold Mining Company in the management, operation, improvement or the purchase price of the said property or any part thereof.

15. That the facts proven are not sufficient to constitute a cause of action against the defendants John Lawler and Ed. W. Wells, or either of them, or against the property in controversy, or any part thereof.

16. That a decree be entered herein, dismissing the complaint and likewise the cross-bill herein out of this court; that the defendants, John Lawler and Ed. W. Wells recover their costs from the plaintiffs herein, that the defendants, The Industrial and Mining Guaranty Company and the Seven Stars Gold Mining Company and John Griffin as receiver of said company, go hence without costs. That a decree be entered accordingly.

WEBSTER STREET, *Judge.*

Filed November 1, 1898.

557 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1900.

CLINTON B. WISER, C. M. FIELD, JOHN A. KERR, JAMES A. FERguson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, Appellants,

*vs.*

JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD MINING COMpany, Industrial Mining & Guaranty Company, and John Griffin, Receiver, Appellees.

Appeal from the district court of Yavapai county—Hon. Webster Street, judge.

T. W. Johnston and Kretzinger, Gallagher & Rooney, attorneys for appellants;

E. M. Sanford, J. F. Wilson, and Herndon & Norris, attorneys for appellees.

*Opinion by Doan, Justice.*

On and prior to the 12th day of May, 1892, John Lawler and Ed. W. Wells were the owners and in possession of the mines and mining claims located in the Eureka mining district in Yavapai county,

Arizona, known as "Hillside," "Happy Jack," "Contact No.
558 1," "Contact No. 2," and "Camp," and locations known as "Midnight," "Morning Glory," "Water," "Hidden Treasure," "Sucker," "Side," "Purple Rose," "Southern Belle," "Robert E. Lee," "Lucky Cuss," "Centipede," and "Good Enough," which are hereby denominated and will be hereinafter referred to as the "Hillside group of mines." The muniments of title showing such ownership in Lawler and Wells were then, and have been ever since, on record in the office of the recorder of said county of Yavapai, Territory of Arizona, where said mines are situate.

Lawler and Wells offered said mines for sale at the purchase price of four hundred and fifty thousand dollars cash. A few days prior to May 12, 1892, H. H. Warner visited this group of mines with T. A. Rickard, a mining expert, and examined the same. After such examination he contracted for the purchase of said group from Lawler and Wells for the sum of four hundred and fifty thousand dollars, paying twenty thousand dollars in cash, the remainder payable in installments in accordance with the terms of an escrow agreement entered into on May 12, 1892, by and between John Lawler and Ed. W. Wells on the one part, and Charles Cowland on the other part, which provided, among other things, that—

"The deed conveying the mine to Cowland be annexed to said agreement and shall be held in escrow with the Bank of Arizona, at Prescott, Arizona, to be held and delivered by the bank upon the following conditions only: The bank to deliver the deed to Cowland, his heirs or assigns, upon his or their paying or causing to be paid as herein provided for the full sum of four hundred and
559 fifty thousand dollars ($450,000). In case of failure of said Cowland in making or causing to be made any of said payments of money at the time or times and in the manner herein stated, then the said Bank of Arizona upon demand being made thereupon by said Lawler and Wells, shall deliver said deed to Lawler and Wells, or their representatives; and in the event of such failure of said Cowland to make or cause to be made any of the said payments, then all payments of money theretofore made by said Cowland on the purchase price of said property shall be forfeited by him, and he agrees and covenants with said Lawler and Wells that all money paid by him as purchase-money on said property shall belong to them and be retained by them as liquidated damages accruing to them for the failure of said Cowland to purchase, take and pay for said property as hereinabove stated and stipulated, and the said Lawler and Wells shall be at once released and discharged from any further duty of obligation to sell and convey the property. It is further agreed that said Cowland by himself and his agents may at once enter into and upon said property and take possession thereof, subject, however, to the legal possession of said Lawler and Wells, and the said Cowland may use, possess, explore, develop, work, and operate the said property, and all the proceeds derived from such use, development, operation and working of the same, and from the ores taken therefrom, shall be at once paid to said

Lawler and Wells and be applied to and credited upon the payment hereinabove stipulated to be made by said Cowland.

"It is further agreed that said Cowland by himself and his agents may at once enter into and upon said property and take possession thereof, subject, however, to the legal possession of said Lawler and Wells, and the said Cowland may use, possess, explore, develop, work, and operate the said property, and all the proceeds derived from such use, development, operation, and working of the same, and from the ores taken therefrom, shall be at once paid to said Lawler and Wells and be applied to and credited upon the payment hereinabove stipulated to be made by said Cowland.

"It is further agreed that said Lawler and Wells shall retain and remain in possession of said property until the full payment of purchase price shall be made, and Cowland recognizes and agrees to such possession, and any and all use made of, by, or on the part of the said Cowland, shall be considered of said Lawler and Wells' possession as aforesaid. Lawler and Wells shall not work the said property or operate the said mine nor interfere with the use, working, and operation of said Cowland.

"It is further agreed that if the said Cowland shall fail to
560 make the payments as above stated, and shall fail to take and pay for said property as above stated, that all improvements made on said property, and all development made thereon and therein, and all ores taken therefrom, shall be the property of said Lawler and Wells, and shall not be removed by said Cowland, and the costs and expenses thereof shall in no manner be charged against said Lawler and Wells or against said property; that said Cowland shall have the right to work and operate the machinery and to use the property mentioned in said deed, during the continuance of said contract and until the forfeiture thereof on his part; and in case of a forfeiture of contract on the part of said Cowland by failure to comply with any of the provisions thereof, or to make any payment as herein provided, then he agrees to at once surrender and deliver possession of said property to said Lawler and Wells."

On the 12th day of May, 1892, and contemporaneously with the execution of the said agreement, a deed to the said Charles Cowland was executed by John Lawler and Ed. W. Wells and wife, particularly describing the said Hillside group of mines, and conveying the same to Cowland for the purchase price of four hundred and fifty thousand dollars. Contemporaneously with the signing of said agreement and deed, the said H. H. Warner signed an instrument in writing, guaranteeing that the said Charles Cowland will carry out and perform the conditions of said agreement above referred to. Afterwards and on the same day, the agreement, deed, and instrument of guaranty were by the said Warner, John Lawler and Ed. W. Wells deposited with the Bank of Arizona at Prescott, as the escrow holder thereof, in accordance with the terms, conditions and provisions contained in said escrow agreement.

While the escrow agreement and deed were executed in
561 the name of Charles Cowland, the said Cowland was the agent

of H. H. Warner, and Warner was the real party in interest in the transaction.

The escrow agreement, deed and guaranty were never recorded, but remained in the possession of the bank as the escrow holder thereof, until November 10, 1893.

About the 15th day of May, 1892, Lawler delivered to T. A. Rickard, as the agent of Cowland, the occupation of the said group of mines under the terms and conditions of the license contained in the escrow agreement, and the mines were operated until June 15th by and at the expense of the H. H. Warner Investment Company.

On the 14th day of June the said H. H. Warner, Charles Cowland, W. M. Earl, W. R. Kennard, and Frank B. Bowen organized and incorporated under the laws of New Jersey the Industrial Mining and Guaranty Company, with a capital of five hundred thousand dollars, for the purpose of handling mines and industrial enterprises, buying and selling stock, etc., and on the 15th day of June, 1892, said Charles Cowland transferred to the said Industrial Company his interest in the mining property involved in this suit for the purpose of handling, operating, and offering the same to the public, giving at that time to the said Industrial Mining and Guaranty Company a written assignment of all his right to said escrow agreement, and a deed to his interest in and to the
562 said agreement between him and the said Lawler and Wells, together with his right, title and interest in the property described therein, reciting the deposit in escrow of the said agreement and the accompanying deed of date of May 12th, 1892, and stating that the Industrial Company is to have the same right as Cowland under said deed and agreement, and is made the agent of Cowland to perform the conditions and provisions of the agreement, and upon such performance to receive the deed.

H. H. Warner, on said June 15th, made and delivered to the Industrial Mining and Guaranty Company his written consent to the making of said assignment and deed by Cowland. The Industrial Mining and Guaranty Company then, by resolution of the board of directors, assumed all the covenants, conditions and agreements in the said escrow agreement of May 12th, 1892, and promised to carry out and perform all the terms, conditions and covenants contained therein on the part of Cowland, and to make the payment for said mines and mining property as provided for in the said escrow agreement.

On the 15th day of June, 1892, T. A. Rickard delivered to the Industrial Mining and Guaranty Company the occupation of said group of mines, and the company thereupon entered into such occupancy and remained therein until the first day of October, 1892.

On the 15th day of August, 1892, said H. H. Warner, W. M. Earl, and one R. S. Hudspeth incorporated the Seven Stars Gold
563 Mining Company, under the laws of New Jersey, with a capital of three million dollars, the object and purpose of said corporation being to hold, operate, and convey mines. The said H. H. Warner was the president of the Industrial Mining and Guar-

anty Company, and was also a director in, and president of, the Seven Stars Gold Mining Company.

On September 10th, 1892, the Industrial Mining and Guaranty Company, through its board of directors, offered to sell and convey all its right, title, and interest in the following mining properties, a portion of which are described in the escrow agreement and deed, to wit: the "Seven Stars," "Happy Jack," "Contact No. 1," "Contact No. 2" mines, and the claim known as "Camp" and the locations known as "Mescal," "Elwood," "Midnight," "Waterfall," and "Boulder," to a company formed, or to be formed, and known as the Seven Stars Gold Mining Company, upon said company showing that it had placed two hundred thousand dollars for working capital in its treasury, and upon receiving two million eight hundred thousand dollars in cash or stock in the Seven Stars Gold Mining Company.

On the first day of October, 1892, the Industrial Mining and Guaranty Company placed the Seven Stars Gold Mining Company in occupation of the Hillside group of mines, and said latter company thereupon entered into such occupancy, under the terms, conditions and provisions contained in the escrow agreement of
564 May 12th, 1892, by the authority of the resolution of the board of directors of the Industrial Mining and Guaranty Company just quoted.

The Industrial Mining and Guaranty Company, as the agent of the Seven Stars Gold Mining Company, under date of September 24th, 1892, issued a prospectus, known as the American prospectus, to promote the sale of the stock of the Seven Stars Gold Mining Company, and circulated the same extensively throughout the United States. The circulation began about the 20th day of September, 1892.

On October 3rd, 1892, the Industrial Mining and Guaranty Company, as agent for the Seven Stars Gold Mining Company, authorized and directed an English prospectus to be issued, but such prospectus was not in fact ever issued or circulated in England or elsewhere. A prospectus was issued and circulated in England without the authority of the Industrial Mining and Guaranty Company or the Seven Stars Gold Mining Company. Such prospectus was prepared, supervised, and circulated by Charles Cowland. The descriptive matter in the prospectus was based upon data furnished by the officers of the Industrial Mining and Guaranty Company.

The circulation commenced about October 5th, 1892, and amounted to 80,000 copies.

On the 15th day of May, 1892, at the Hillside mines, Lawler and Wells delivered to T. A. Lickard a report previously made
565 upon said mines, known as the Blauvelt report, together with a map of the underground workings of said mines, as such workings then existed, known as the Blauvelt map; also copies of smelter and milling returns of ore which had been previously shipped from said mines and reduced, and known as smelter returns. On September 28th, 1892, at the request of H. H. Warner, Lawler

sent by express to Warner, in New York city, the original of said smelting and milling returns.

On August 27th, 1892, Ed. W. Wells visited the office of the Industrial Mining and Guaranty Company in New York city and had an interview with H. H. Warner, president of that company and of the Seven Stars Gold Mining Company.

On the 30th day of August, and between that day and September 3rd, 1892, John Lawler was in the office of the Industrial Mining and Guaranty Company in New York city, and learned that the American prospectus was being prepared for circulation for the purpose of promoting the sale of the stock of the Seven Stars Gold Mining Company, and also became aware that the Blauvelt reports and map, and copies of the smelter returns were being used as a basis of description of the Hillside group of mines to be contained in the proposed prospectus.

On October 28th, 1892, H. H. Warner, in Prescott, represented to Lawler and Wells that he was unable to place securities that he held in time to meet the payment of that portion of the purchase
566 price falling due November 12th, 1892, and relying upon said representations, on request of Warner, Lawler and Wells, on October 28th, 1892, agreed to an extension of the time of payment under the agreement of May 12th, 1892, and provided that the original agreement remain in full force except as to said modification touching the time of payment.

On May 8th, 1893, Warner made a general assignment of his property for the benefit of his creditors, and on May 11th, 1893, Lawler and Wells, knowing of the assignment of Warner, executed an agreement with Charles Cowland, stipulating that the payment mentioned in the original escrow agreement as falling due on May 12th, 1893, may be made by said Cowland as follows: $9,098 in cash, and $4,500 to be paid on the first day of June, 1893, and the like sum to be paid on the first day of each of the following months, viz: July, August, September, October, and November.

A part of the consideration for the agreement for the extension of the time of payment was the issuance and delivery to Lawler and Wells of fifty thousand dollars, par value, of the guaranteed capital stock of the Seven Stars Gold Mining Company, and the appointment of John Lawler manager of operation of the Hillside group of mines; and John Lawler, on May 13th, 1893, entered upon his duties as such manager.

On the 18th day of August, 1893, the chancery court of
567 New Jersey appointed John Griffin receiver of the Industrial Mining and Guaranty Company, and the said John Griffin qualified and entered upon his duties as receiver that day.

The Seven Stars Gold Mining Company, from October 1st, 1892, until August 17th, 1893, continued to occupy and operate the Hillside group of mines under and by virtue of the occupation thereof so given to it by the Industrial Mining and Guaranty Company, under the terms, conditions, and provisions contained in the escrow agreement of May 12th, 1892.

On September first, 1893, neither Charles Cowland, nor the said

receiver, nor the plaintiffs, nor any one of them, paid or offered to pay to Lawler and Wells the sum of $4,500, payable on that day according to the terms and conditions of the aforesaid escrow agreement and modifications thereof, nor has Cowland, nor has any one for him, paid said sum since said date, nor has Cowland, or any one for him, paid or caused to be paid any portion of any purchase-money of said property falling due or payable on or after the first day of September, 1893, according to the terms and conditions of said escrow agreement of May 12th, 1892.

On the 10th day of September, 1893, Lawler and Wells, as owners of the legal title of the said Hillside group of mines, and claiming to exercise their rights under the escrow agreement of May 12th, 1892, entered into possession of said Hillside group of mines, and from thenceforward until September 30th, 1897, continued to remain in possession of said mines.

568 On the 10th day of November, 1893, the Bank of Arizona, as escrow holder of the escrow agreement and deed dated May 12th, 1892, at the request of Lawler and Wells, redelivered said deed, according to the terms of the escrow agreement, to the said Lawler and Wells.

From the gross proceeds of operation by the Industrial Mining and Guaranty Company there was deposited in the Bank of Arizona to the credit of Lawler and Wells, on account of the purchase price, in accordance with the escrow agreement of May 12th, 1892, the sum of $19,987.61. During the operation of said property by the Seven Stars Gold Mining Company a like deposit was made for the same purpose, amounting to $47,812.25, aggregating the sum of $67,799.86.

On May 12th and 24th, 1892, H. H. Warner paid Lawler and Wells, on account of the purchase price of said property, the sum of $51,000, and there was paid on and between November 12th, 1892, and August 4th, 1893, to Lawler and Wells, on account of the purchase price of said property, under the terms of the escrow agreement, various sums, aggregating the amount of $112,339.96.

During the life of the Industrial Mining and Guaranty Company it was engaged in promoting sundry mining, railroad and industrial enterprises, including the business transactions of the Seven Stars Gold Mining Company. During that time it received and

569 disbursed the sum of $824,142.13. From June 15th, 1892, to and including August 1st, 1893, the moneys which it received and disbursed on account of its various enterprises, were all deposited in its name in a common fund in the Continental National Bank of New York City and checked against, used and disbursed by it in its various enterprises as required therein, excepting the sum of $111,724.23, of which sum $67,799.86 were the gross proceeds of the ore from the Hillside group of mines, and the further sum of $43,924.37, which is composed of $224.37, money received prior to May 11th, 1893, from the sale of the Seven Stars Gold Mining Company stock, and the remainder from loans obtained by said company subsequent to May 11th, 1893.

Lawler and Wells did not at any time prior to the commence-

ment of this action have any knowledge or notice that any money received by them on account of the purchase price of the Hillside group of mines, as provided for in the escrow agreement of May 12th, 1892, came from the money, or was any part of the money which any one or more of the purchasers of the stock of the Seven Stars Gold Mining Company had paid into the Industrial Mining and Guaranty Company on account of the purchase price of said stock.

Lawler and Wells were not the promoters of, nor in anywise interested in, the organization of the Industrial Mining and Guaranty Company, nor the Seven Stars Gold Mining Company, nor
570 in the issuance or circulation of the prospectus, nor the issuance or sale of the capital stock of either of said companies, nor in the proceeds thereof. After the 11th day of May, 1893, the Industrial Mining and Guaranty Company received the sum of $500, and no more, from the sale of the stock of the Seven Stars Gold Mining Company.

The amount received by the Industrial Mining and Guaranty Company from the sale of the guaranteed stock of the Seven Stars Gold Mining Company aggregated $253,128.05, of which sum $819.08 was returned to the subscribers and the stock cancelled, making the amount of money retained by the Industrial Mining and Guaranty Company from the sale of guaranteed stock $252,308.97. There was received from the sale of common stock of the Seven Stars Gold Mining Company $2,583.89.

The Seven Stars Gold Mining Company did not keep any books of account of receipts and expenditures of money in the New York office, but all the receipts and expenditures of money on account of the operation and expenditures of the Industrial Mining and Guaranty Company and the Seven Stars Gold Mining Company during their respective operation of the Hillside group of mines were kept by the Industrial Mining and Guaranty Company in its own books of account.

The Industrial Mining and Guaranty Company, between the 15th day of June, 1892, and the 18th day of September 1893, paid out for the operating expenses and purchase of machinery and purchase price of the Hillside group of mines, dividends and other
571 expenses, the aggregate sum of $380,259.81, which amounted to $127,986.84 more than the amount of money received by it from the sale of the Seven Star stock, and $60,186.98 more than the aggregate amount of money received by it from the sale of stock and from the net proceeds of ore from the Hillside group of mines.

During the operation of the said Hillside group of mines by the Seven Stars Gold Mining Company there was expended by the Industrial Mining and Guaranty Company for costs of operation, improvements, supplies and machinery, the sum of $112,411.32.

On and between January 13th, 1893, and May 10th, 1893, the Industrial Mining and Guaranty Company paid out for dividends on stock sold of the Seven Stars Gold Mining Company the sum of $11,533.07 to holders of stock of the Seven Stars Gold Mining Company.

The holders of stock of the Seven Stars Gold Mining Company did not, nor any of them, before the commencement of this suit, return or offer to return to the Seven Stars Gold Mining Company his stock, or any part thereof; neither said stockholders, nor any one of them, prior to the commencement of the action, returned or offered to return his or their portion of the dividends received by him or them from the Industrial Mining and Guaranty Company.

There was never any meeting called or held of the stock-
572 holders of said Seven Stars Gold Mining Company, but on April 4th, 1893, several stockholders, representing themselves and about three hundred others, voluntarily met at Jersey City, and there made demand upon John Griffin, receiver, to commence this suit, and he refused so to do.

On and between the 20th of September, 1893, and September 30th, 1897, Lawler and Wells received from the operations of the Hillside group of mines the sum of $37,376.86, and disbursed in such operations during that time the sum of $35,658.93.

Between November 17th, 1893, and the commencement of this action the plaintiffs or said receiver, or any one of them, or either of them, did not make any demand upon Lawler and Wells for the possession of the properties in controversy, or any part thereof.

In 1895, C. B. Wiser and twenty others, stockholders in the Seven Stars Gold Mining Company, brought suit against Lawler and Wells and others, in the district court of Yavapai county, setting up the facts and alleging that the representations of ownership as set forth in the prospectus issued September, 1892, were false and fraudulent, and that plaintiffs were misled thereby, that Lawler and Wells assisted in the preparation and circulation of the said prospectus, and prayed that the court decree Lawler and Wells to have by their conduct estopped themselves, as against the plaintiffs and
573 others in like estate, from asserting that the Seven Stars Gold Mining Company is not the owner of the mines and mining property described in the prospectus and pictured on the map, requesting a provision in the said decree for an accounting and a money judgment against Lawler and Wells upon such accounting for all the proceeds and value of ore, bullion, and other property taken from the mines and mining property and received by the said Lawler and Wells between the 12th day of May, 1892, and the date of entry of final decree, together with a money judgment against Lawler and Wells for all damages caused by them to said mines and mining property, or that the court decree that the said plaintiffs and all others in like estate may have and recover from the said Lawler and Wells the aggregate amount of money paid by plaintiffs and others in like estate for stock in the Seven Stars Gold Mining Company, and for other relief.

On May 13th, 1896, after taking part of the evidence, the plaintiff amended the bill to conform to the proofs. To this amended complaint Lawler and Wells filed general and special demurrers and a plea of estoppel in the nature of an answer. Receiver Griffin filed a short answer. The Seven Stars Gold Mining Company and the

Industrial Mining and Guaranty Company were adjudged in default for want of answer.

On September 22nd, 1897, the cause came on for hearing before Hon. H. C. Truesdale, presiding judge. Depositions were
574 read, witnesses examined, documents offered in evidence, and the cause exhaustively argued; thereupon the court entered an interlocutory decree in favor of plaintiffs, calling for an accounting before a master in chancery, and appointing a receiver for the property. Pending an accounting before the special master, Judge Truesdale died. The case was then assigned to Hon. Webster Street. The report of the special master was returned July 8th, 1898.

On July 12th, 1898, the cause was further heard before his honor Webster Street, on the report of the special master in chancery and the report of the receiver. The report was by the court examined and approved. The resignation of the receiver was accepted and the sureties on his bond discharged from liability, and Lawler and Wells, with consent of plaintiffs, were appointed receivers, without compensation, and judgment and final decree was entered in favor of plaintiffs, in accordance with the findings and conclusions of Judge Truesdale, and Lawler and Wells filed a motion for a new trial. After full argument thereon, on October 22nd, 1898, the motion for a new trial was granted.

On November 1st, 1898, by consent, the prayer of the complaint having in the meantime been amended, the case was submitted for decision to Judge Street upon the pleadings and the evidence then in the record, and upon the arguments made on the motion
575 for a new trial, whereupon the court held that plaintiffs were entitled to no relief, and ordered the dismissal of the complaint. The dismissal carried the cross-bill with it.

Findings of fact and conclusions of law were made and filed in the case by the court, and a decree in accordance therewith entered, and the motion for a new trial was denied. From the judgment of the court dismissing the amended complaint and overruling the motion for a new trial, the plaintiffs appeal, and have presented twenty assignments of error.

Some of the assignments are too general and indefinite to receive any consideration by this court.

The first assignment alleges that "the district court erred in decreeing that plaintiffs are entitled to no relief in the case."

The fifth assignment alleges, "The court erred in refusing and rejecting the findings of fact, and each of them, submitted by plaintiffs," referring to nineteen different findings submitted by plaintiffs, only eight of which are presented in the abstract of record furnished this court.

The fifteenth assignment of error alleged, that "the findings of the court are incomplete and erroneous," with no statement or specification wherein the errors or incompleteness consist. The findings of the trial court, as presented by the record, embrace sixty-one different and distinct findings of fact. In a case very similar to
576 this one ("The City of New York," 147 U. S., 76), in which sixteen exceptions were taken to the findings of the court,

twenty-one specifications of error were embodied in the seventeenth exception to the opinion of the court, and there were thirty-five exceptions to the refusal of the court to find the facts and law as requested by the claimants. Mr. Justice Brown of the United States Supreme Court said that it was not the duty of the court to review the testimony upon every finding of fact to which the defeated party takes an exception, and inquire whether such testimony authorized the finding. In that case the court held:

*First.* "That the facts found by the court below are conclusive; that the bill of exceptions cannot be used to bring up the evidence for a review of these findings; that the only rulings upon which we are authorized to pass are such as might be presented by a bill of exceptions prepared as in actions at law; and that the findings have practically the same effect as the special verdict of a jury." 102 U. S., 200; 98 U. S., 440; 102 U. S., 214; 104 U. S. 185; 104 U. S. 322; 115 U. S. 353; 128 U. S. 474.

*Second.* "That it is only the ultimate facts which the court is bound to find, and that this court will not take notice of a refusal to find the mere incidental facts which only amount to evidence from which the ultimate fact is to be obtained." 105 U. S. 381; 121 U. S. 469; 121 U. S. 67.

*Third.* "If the court below neglects or refuses to make a finding, one way or the other, as to the existence of a material fact, which has been established by uncontradicted evidence, or if it finds such a fact when not supported by any evidence whatever, and an exception be taken, the question may be brought up for review in that particular. In the one case the refusal to find would be equivalent to finding that the fact was immaterial, and in the other, that there was some evidence to prove what is found, when in truth there was none. Both of these are questions of law and proper subjects
577 for review in the appellate court." 105 U. S. 387; 140 U. S. 360.

"This case must then turn upon the question whether the circuit court found any facts which were wholly unsupported by testimony, or refused to find any fact material to the issue, when such fact was proven by uncontradicted evidence."

This court will, in accordance with the rule laid down above, take up the assignments which are sufficiently distinct and specific to direct the attention of the court to the errors complained of, and will look into and review the determination by the lower court of those issues which are decisive of the interests and rights of the parties, and controlling in the disposition of the case.

The second assignment of error alleges, that "the court erred in not decreeing relief to the plaintiffs pursuant to the first prayer of the amended complaint."

The complainants pray, first, that the court decree that the defendants Lawler and Wells have by their conduct estopped themselves, and they are now estopped, as against the plaintiffs and others in like estate, from asserting that the Seven Stars Gold Mining Company is not the owner of the property described in the prospectus, and pictured on the map, and that the court order, adjudge,

and decree that the full title to the said mines and mining properties, and every part thereof, is in the Seven Stars Gold Mining Company, with prayer for perpetual injunction, money judgment upon an accounting for proceeds of ore and bullion taken from the mine between the 12th of May, 1892, and the date of entry of final
578 decree, and money judgment for damages, said money judgment to run to the Seven Stars Gold Mining Company, in the interest and for the benefit of *bona fide* stockholders, plaintiffs and others in like estate.

This assignment raises and presents squarely the question whether the facts pleaded and sustained by the proof constitute an equitable estoppel against the defendants Lawler and Wells.

The supreme court of California has said, in Brigham Young Trust Company *vs.* Wagner, 40 Pac. Rep. 764:

"Matters pleaded by way of equitable estoppel must be of such a character, and sufficient, as pleaded, to make a cause of action for deceit on the part of the plaintiffs. The rule is stated in language of infinite variety in the many cases that have arisen in the courts. In Bronson *vs.* Wirth, 17 Wall. 32, the Supreme Court of the United States say: 'If one person is induced to do an act prejudicial to himself in consequence of the acts or declarations of another on which he had a right to rely, equity will enjoin the latter from asserting his legal rights against the tenor of such acts or declarations.' In Dickerson *vs.* Colgrove, 100 U. S. 578, upon the same subject, the Supreme Court say: 'He who by his language leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted.' It is not necessary to quote from other authorities; the rule is easily deducible from these. It is this: In order to create an estoppel of this character, it is necessary that the plaintiff, either by language or conduct, should have, first, falsely represented or concealed a material fact; second, the false representation or concealment must have been knowingly made; third, the party pleading the estoppel must have been ignorant of the facts; fourth, the representation must have been made with the intention that it should be acted upon; fifth, the party pleading it must have been misled thereby to his injury in some substantial particular."

579 Tested by this rule, are the facts that have been established in this case sufficient to create an equitable estoppel against Lawler and Wells as to the plaintiffs in the case? There are no allegations of fraud, misrepresentation of concealment by Lawler and Wells in their dealings with Warner and Cowland in the contract for the disposal of the mines to those persons. The claim is based upon misrepresentation alleged to have been made by Lawler and Wells, in conjunction with Warner and the officers of the Industrial Company, in the preparation and circulation of the American prospectus and accompanying map distributed to the stockholders of the Seven Stars Gold Mining Company, asserting the ownership in the mines to be in the Seven Stars Company, and the like action on the part of Lawler and Wells with the same parties,

in the preparation and distribution of the English prospectus containing the same assertion.

We will first consider the English prospectus.

The complaint alleges that about September 27th, 1892, there was issued another printed prospectus for the purpose of distribution in England and Scotland; that this said prospectus was prepared by said Warner and the officers of the said gold company, with the assistance, knowledge, consent, sanction and acquiescence of the said Lawler and Wells, in and by which prospectus it is stated that "the mines owned by the company are situated in the Eureka
580 mining district, Arizona;" that the said prospectus was generally circulated in London and other cities of England, and also in cities and towns of Scotland.

The district court found as a fact, that on October 3rd, 1892, the Industrial Mining and Guaranty Company, as the authorized agent of the Seven Stars Gold Mining Company, did authorize and direct an English prospectus to be issued; that such prospectus was never circulated in England or elsewhere; that a prospectus was issued and circulated in England without the authority of the directors of the Industrial Mining and Guaranty Company, or the Seven Stars Gold Mining Company; that neither John Lawler nor Ed. W. Wells had any knowledge or information that this latter prospectus had been or was circulated in England, or had any knowledge or notice of its contents prior to October, 1893.

The only ground for estoppel against Lawler and Wells, as connected with the English prospectus, which the pleadings present, is the allegation of the ownership of the mines in the Seven Stars Gold Mining Company. Not only did Lawler and Wells deny the making of such assertion themselves, or the knowledge on their part of any such assertion having been made in such prospectus, or the knowledge of the circulation of any prospectus containing such assertions, but the evidence presented by the plaintiffs themselves to sustain the above allegation of the complaint was the record book of the Industrial Mining and Guaranty Company, which shows a meeting of
581 October 3rd, 1892, at which the London prospectus was approved. This prospectus as fastened in the minute book of the company is the same as the prospectus attached to the complaint of the plaintiffs, with the exception of the third paragraph of the body of such prospectus, which reads that "the mines are situated in the Eureka mining district, Yavapai county, Arizona," instead of "the mines *owned by the company* are situated in the Eureka mining district, Yavapai county, Arizona." This eliminates the English prospectus, and any claim made under it by the plaintiffs, from any further consideration in the case. The only evidence introduced tending to charge Lawler and Wells with any responsibility arising from the English prospectus, being evidence (contradicted by Lawler and Wells) tending to charge Lawler with participation in the preparation and knowledge of the contents of the English prospectus being prepared by the officers of the Industrial Company, between August 31st, 1892, and September 3rd, 1892. As their own evidence establishes the fact that the prospectus then in course of preparation

and afterwards approved by them did not contain the damaging assertion complained of, it is immaterial whether or not Lawler assisted in the preparation of such prospectus, or had knowledge of its contents: and as they have offered absolutely no evidence that either Lawler or Wells had any knowledge of either the circulation or contents of any other prospectus than this, there could,
582 under no possible view of the case, — any liability attach therefrom.

We will next proceed to the consideration of the grounds of estoppel that have been shown in connection with the American prospectus and the accompanying map. It is alleged in the complaint that—

"On or about the 24th day of September, 1892, the said Lawler, as agent of the said Wells, and acting for both of said defendants, well knowing the condition of the title of the said mines, on his own behalf and on behalf of said Wells, assisted and aided the said H. H. Warner to prepare, and cause to be issued, a prospectus reciting among other things on the second page of said prospectus, 'This company is formed to acquire, without further expense or liability to subscribers, on October 1st, 1892, as a "going concern" and to provide a working capital to further equip and develop the "Seven Stars" and "Happy Jack" mines, also the locations "Mesa," "Elwood," "Midnight," "Waterfall," and "Boulder;"' that accompanying and a part of said prospectus there was prepared a map or plat of said mining properties by the said Lawler and Wells, and the said Warner, upon which map the following representation and statement appears, 'Map of the group of mines belonging to the Seven Stars Gold Mining Co. Yavapai county, Arizona.' That said prospectus, map and blank applications were distributed throughout the United States by said H. H. Warner and the secretary and treasurer of said company. That copies of said prospectus, map and blank applications came to plaintiffs herein during the month of October, 1892, and the said plaintiffs relying upon and believing and being led and induced by representations made and contained in said prospectus and map, severally subscribed for stock in the Seven Stars Gold Mining Co."

The only fraud herein charged upon Lawler and Wells in connection with the American prospectus is the recital and representation of the title to said mines and mining property in the said gold company contained in said prospectus, and the omission of any recital tending to show title to the said property in any other person or persons than said company; and the
583 only statement or assertion of the title complained of to the court is the recital on the second page, just quoted: "This company is formed to acquire, on October 1st, 1892, as a 'going concern,' and to provide a working capital, and to further equip and develop the Seven Stars mines;" and that accompanying said prospectus, as a part thereof, was a map upon which the statement appears "Map of the group of mines belonging to the Seven Stars Gold Mining Co."

The district court held, as a conclusion of law: "That the pur-

chasers of the capital stock of the Seven Stars Gold Mining Co. were not authorized from reading the prospectus, maps and blank applications distributed, to so construe the same as to believe or conclude therefrom that the legal title of the properties mentioned therein was vested in the Seven Stars Gold Mining Co." Without determining at this time whether or not the conclusion is authorized in its entirety, it is sufficient for the consideration of the question now presented that the statement in the prospectus, taken by itself, instead of asserting title in the gold company, is equivalent to the contrary assertion; the object being stated, on September 24th, to acquire on October 1st the mines mentioned, would justify the belief that the title was not then in the company, but would be acquired in the future. Whether the statement placed on the map was calculated to modify this belief would not be material as to Lawler and Wells, because
584 the district court found as a fact (finding No. 19), "That the defendant Lawler, on his visit to New York, August 30th, 1892, saw the original Brodie map hanging on the wall of the office of said companies in New York; that the original Brodie map, of which defendants' map, Exhibit 'A', is a true copy, had endorsed thereon the words, to wit: 'Plat of the Hillside and adjoining claims,' and said words were written on the original draft of distributed map, Exhibit 'C' attached to the complaint; that said quoted words were, before distribution, changed to the words, 'Map of the group of mines belonging to the Seven Stars Gold Mining Co.'" This finding is supported by the evidence of A. O. Brodie, the maker of the map, who identified the map in evidence on the trial as a true trace of the map made by him for the Hillside Company, and testified: "This map purports to be a map of the different mines and mining locations, and bears the inscription, 'The Hillside mines, Yavapai county, Arizona, Prescott, Arizona, August 1, 1892.' These are the letters I put on the original map. I understood then that the mines were being operated by the Hillside Mining Company." Another map was handed to the witness, who said: "That is a trace of the map I made for the Hillside Company. I made the original of these two maps; 'B' purports to be a map of the mines and claims involved in this litigation and bears the inscription, 'The Hillside mines, Yavapai county, Arizona, Prescott, Arizona, August 1, 1892, surveyed and drawn by Alexander O.
585 Brodie, civil engineer.' I forwarded the original map to H. H. Warner some time during the month of August, 1892. I never drew a map with the words, 'Belonging to the Seven Stars Gold Mining Co.' on it or any words that indicated that the locations belonged to the Seven Stars Gold Mining Co.'" (Abst. Ev. page 212).

Lawler testified: "Warner and Kennard asked me about the mines. I told them I was not to the mine since I sold it to them. Right along the wall a map hung, and there was some very rich ore. They asked what I thought of the map; the map was up over the ore. I looked at the map. I do not remember what was written on the map; it was up so far I could not read it. The only thing I noticed was the outlines above that looked like workings I made myself. I told them it looked natural." Q. "What, if any, con-

versation had you about stocking this mine and selling the stock, and a prospectus?" A. "None, whatever." Q. "What, if any, prospectus was shown you?" A. "None whatever. I was never in Warner's private office. I never received any prospectus. I first saw one in October, 1893, in Denver, on my way back from the World's Fair. I was in California during the time those were booming around here, the whole year." Q. "When you were in New York, what was shown you to read; what reading matter in the nature of prospectuses or circulars about those mines?" A. "Nothing at all was shown me. I never saw the prospectus of the Seven
586 Stars Gold Mining Co." (Abst. Ev. page 223).

The complaint alleges that the prospectus and map were chiefly prepared and mailed by H. H. Warner and the secretary and treasurer of the company, assisted by said Lawler and Wells.

Footner, the secretary and treasurer, testified: "The prospectus, map and blank applications were prepared and printed within three weeks prior to the date printed on them. H. H. Warner supervised the preparation thereof, was the principal in the matter, and the greater part of the documents were framed in accordance with his views. Concerning what information John Lawler had in connection with the preparation of the prospectus, I can only say that in conversation I made him aware of that fact and that he knew the prospectus was being prepared prior to my interview with him. I never met Ed. W. Wells. Concerning Wells' knowledge of the transaction, I am entirely ignorant, excepting that the Industrial Company mailed to Lawler and Wells a number of the prospectuses."

H. H. Warner stated in evidence: "My supposition is that Lawler and Wells knew that the prospectus, copies of which were to be sent out in the quantities that were talked about with Lawler, would be printed—not written. I have no knowledge whether Lawler knew that they were printed or written."

The utmost extent to which the evidence in the case goes is to show that Lawler and Wells had knowledge of the preparation
587 and circulation of the prospectus and map. There is no evidence that they knew the statements or representations contained in the prospectus or on the map, or that they occupied such a relation to the preparation or circulation thereof as would impose upon them a duty to know the contents. The bare knowledge, therefore, of such preparation and circulation will impose no duty nor fasten any liability upon Lawler and Wells, arising from any statement, fraudulent or otherwise, contained in such prospectus or map, without evidence of knowledge on their part of such statements being contained therein.

It does not appear from the evidence in the case that the defendants, or either of them, were the authors of any false or fraudulent statements, either in the prospectus or on the map, calculated to mislead or deceive innocent purchasers; or that they, or either of them, had knowledge of any such statements and the falsity thereof, and stood by in silence while innocent purchasers were misled thereby. There is therefore no case for the application of the doctrine of equitable estoppel. "For its application there must be some in-

tended deception in the conduct or declarations of the party to be estopped, or such gross negligence as to amount to constructive fraud." Henshaw *vs.* Bissel, 85 U. S. 272.

588 The disposition of the questions above determined will render unnecessary a consideration of the third and fourth assignment-, as they refer simply to the alternate prayer for relief in the complaint, based upon the same allegations of fraud and misrepresentation upon which the error alleged in the first assignment was predicated. It is next assigned severally, in the succeeding eight assignments of error, that the court erred in rejecting the 3rd, 7th, 9th, 10th, 11th, 14th, 15th, and 19th findings of fact submitted by the plaintiffs. An examination of these several findings discloses that the third finding, as requested, was not sustained by the evidence in the case, and therefore was properly rejected.

The seventh finding related only to evidentiary facts, the refusal to find which by the trial court will not be reviewed by this court.

The ninth to nineteenth findings, inclusive, request the finding of a number of evidentiary facts, some of which were elsewhere found by the court, some of which were adversely found on conflicting evidence, some of which were not proven by any evidence appearing in the record, and many of which were not material, but were simply incidental facts which would only amount to evidence from which the ultimate fact might be deduced.

A careful examination of the facts requested to be found in the several findings enumerated, and of the evidence as shown by the

589 record, has failed to disclose a refusal by the lower court to find an ultimate or material fact which was supported by uncontradicted evidence, nor has there been in any instance a fact other than, or contradictory to, the facts therein requested, found by the court unsupported by evidence. We do not, therefore, feel authorized to disturb the findings of the lower court in the instances that are herein presented. We think the language of the United States circuit court of appeals (Sydney *vs.* Dobson, 74 Fed. 757) is applicable to the case now under consideration. The court there says:

"In the circuit court the decision turned solely upon an issue of fact. The circuit court decided the issue. We have carefully read and considered all the testimony contained in the record, and have reached the conclusion that there were facts and circumstances developed on the hearing of the case which were fully adequate to warrant the inference that the circuit court appears to have drawn. The issue being one of fact, it would subserve no useful purpose to narrate the evidence in detail. It will suffice to say that the testimony was of such nature, that different unprejudiced minds might with equal reason draw different inferences and reach different conclusions. This court, however, has repeatedly declared that where a master or chancellor has considered conflicting evidence, and made a finding thereon, the finding will be taken as presumptively correct, and will be permitted to stand, unless an obvious error has intervened in the application of the law, and some serious and important mistake appears to have been made in the consideration of

the evidence. Warren *vs.* Burt, 58 Fed. 101, Paxson *vs.* Brown, 61 Fed. 847, Stuart *vs.* Huden, 72 Fed. 402, McKinley *vs.* Williams, 74 Fed. 94. The same rule has been announced and acted upon by the Supreme Court of the United States on several occasions. Tilgham *vs.* Proctor, 125 U. S. 136, Kimberly *vs.* Arms, 129 U. S. 512, Evans *vs.* Bank, 141 U. S. 107, Furrer *vs.* Ferris, 145 U. S. 132. We have concluded, therefore, that, inasmuch as the case turned upon an issue of fact and inasmuch as the evidence was fully adequate to justify the finding made by the trial judge, it should be allowed to stand."

590 It is argued in the brief of the appellants that the defendants are estopped to disturb the appearance and representation of ownership of the property by the Seven Stars Gold Company, as evidenced by their occupation and use of such property, but the evidence in the case shows that the Seven Stars Gold Mining Co. did not at any time claim or exercise or attempt to hold or exercise any possession adverse to Lawler and Wells or inconsistent with the use, possession, and occupation granted to Cowland by the license contained in the escrow agreement, and to which they would succeed as Cowland's assigns or agents, hence Lawler and Wells had not placed upon them the duty nor were they given any occasion or necessity to assert, or make known their claim to the title. The evidence discloses that Lawler and Wells did not know during the time of the occupation and possession of the property by the Seven Stars Gold Mining Co. that the plaintiffs as purchasers of the stock were ignorant of the provisions and terms of the escrow agreement, or that they as such purchasers had been informed or believed that the Seven Stars Company owned the title of the mines instead of holding and working them under the license of the escrow agreement.

It was also argued that the receipt by Lawler and Wells of the returns from the ore should likewise operate as such estoppel, but the evidence likewise disclosed that such disposition of the receipts from the ore was in accordance with the provisions of the
591 escrow agreement, of which the Industrial Mining and Guaranty Company and the Seven Stars Gold Mining Company were fully cognizant, and Lawler and Wells would not be responsible for any fraud practiced on the stockholders of such company by the officers and the directors, of which they were as ignorant as the stockholders; and as the only dealing of the officers and directors with such stockholders of which Lawler and Wells had any knowledge was consistent with honesty and fairness, and apparently in harmony with the provisions of the escrow agreement under which they were working, and of whose provisions Lawler and Wells supposed the stockholders to be as fully advised as the officers and directors, there would be nothing to put Lawler and Wells upon inquiry. The facts pertinent to these issues have been found by the trial court, and such findings have been based upon evidence contained in the record.

After a patient and careful examination of the record, we are convinced that the lower court correctly held "that the facts proven

are not sufficient to constitute a cause of action against John Lawler and Ed. W. Wells, or either of them, or against the property in controversy, or any part thereof."

The judgment and decree of the lower court is therefore affirmed.

FLETCHER M. DOAN,
*Associate Justice.*

592 We concur:

WEBSTER STREET, *C. J.*
GEO. R. DAVIS, *A. J.*

Justice Sloan having been connected with the case as counsel took no part in its consideration in this court.

(Endorsed:) No. 651. In the supreme court of the Territory of Arizona. Wiser, *et al. vs.* Lawler *et al.* Opinion. Recorded Book 4 pages 568–598 inclusive. Filed Nov. 9, 1900. Thomas Grindell, clerk.

593 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1899.

CLINTON B. WISER ET AL., Appellants,
*vs.*
JOHN LAWLER ET AL., Appellees.
} Appeal from District Court, Fourth Judicial District.

*Petition of Appellants for Rehearing.*

May it please this honorable court:

Come now the appellants, Clinton B. Wiser, C. M. Field, John A. Kerr, James A. Ferguson, Dorsay Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, and pray this honorable court to rehear this cause, and reconsider its opinion herein, and upon such reconsideration vacate its decision of affirmance: and in support of such petition appellants respectfully point out and urge grounds and reasons as follows:

I.

The opinion of this honorable court, examined with the abstract of the record, unquestionably shows that this court overlooked or misconceived material undisputed facts, and assumed the ex-
594 istence of other facts which the evidence overwhelmingly contradicts. We desire to invite once more the attention of this honorable court to the real facts of record, firmly believing that upon their due consideration your honors will reach a conclusion different from that embodied in your recent decision.

First. This honorable court, in its opinion, fails to give any weight whatever or even refer to the undisputed fact that before and at the time H. H. Warner made the agreement for the purchase of the

Hillside property with Lawler and Wells, he informed them that he wanted to organize a corporation to take title to the property, sell its stock by popular subscription, and thus raise the funds to meet the deferred accruing payments on the property.

Wells, appellee, testified that Warner said to him and Lawler, at the time of the execution of the purchase contract: "I propose"—that is the way he put it—"propose to form a company and work it for all there is in it, work it, and develop it * * * *." He emphasized the latter by saying: "I intend to work it for all there is in it." (Abst. 235.)

Lawler expressly admits (Abst. 231) that Warner told him as early as May 8th that he, Warner, was going to make a company out of the property and stock it. "Yes sir," Lawler testified, in answer to a question of counsel, "he made that statement to me."

Lawler again admits, on cross-examination, that at the
595 time he and Warner rode back from the mine to Prescott, which was before the execution of the purchase contract, Warner said to him in conversation in the buggy that he was going to make a company out of the property and stock it (Abst. 229).

Warner's testimony touching this matter is clear, rational, probable and uncontradicted:

"I was present at the time the property was secured by Cowland, "or his representative; D. A. Rickard, and the agreement of May "12th signed. There was a good deal of discussion at the time on "the point of my signing the agreement instead of Cowland, as I "was a party supposed to be interested. I took the ground of pre-"ferring not to do so, as I would probably be president of a com-"pany that would be organized for promoting this and similar prop-"erties, being at the time president of the H. H. Warner Investment "Co., and the probability being that the company to be organized "would offer the property to the public at a large advance. This "matter was discussed quite freely, and resulted in my guaranteeing "Charles Cowland's contract for the property to Lawler and Wells. "It was generally understood that the property was to be offered in "the near future to the public. This was the general talk during "the final negotiations for the property in the presence of Lawler "and Wells. T. A. Rickart signed the name of Cowland without "the latter's knowledge or consent. I was asked to sign his name,
"but declined on the ground that I had no power of attorney,
596 "and did not feel justified in doing it. Rickart told Lawler "and Wells that he had no authority to sign Cowland's "name."

Does Lawler or Wells dispute that the reason Warner refused to sign the contract himself was that he intended to offer the property in the near future to the public at a large advance? Do they deny that that matter was freely and fully discussed at the time of the execution of the agreement? Emphatically, no. Lawler said he could not remember the reason given for putting the contract in Cowland's name. (Abst. 222.)

Wells said that Warner gave as a reason for the introduction of Cowland in the negotiations that he, Warner, "could handle the

"securities much better if the property was conveyed to Cowland "instead of himself." Was Judge Wells so dull as not to perceive the meaning of that language?

Rickart, disinterested, testifies without any dispute of record:

"I was present at the time the contract was drafted (Abst. 165). "* * * Warner in my presence told Lawler the exact connec- "tion that Cowland had with him, and Lawler and Wells were cog- "nizant of the object of substituting Cowland's name in the place of "Warner. * * * Warner spoke freely with Lawler and Wells "before his departure, and after he left I had several conversations
"with Lawler in a friendly sort of way, and told him of the
597 "steps that Mr. Warner was taking for the promotion of the
"mine in New York and London."

So later Lawler went to New York. Footner talked with him, and began to tell him all about Warner's plans regarding organization of company, and issuance and sale of stock, when "Mr. "Lawler expressed himself to me as being perfectly well aware of "Mr. Warner's intentions, he having had conversations with him "concerning the matter."

Observe, too, the facts which corroborate the undisputed testimony that Lawler and Wells were fully apprized at the time of the execution of the Cowland contract of the intentions of Lawler and Wells, namely, the execution of the agreement in the name of a figurehead, the deferment of payments for a period affording ample time to sell the stock, and the immediate steps to organize a corporation and offer its stock to the public, upon the return of Doctor Warner from Prescott.

Does the record, then, sustain this honorable court, in its statement of the case, and in its application of the law to the facts, in omitting all mention of and denying any weight to so undisputed and material, a fact, namely, the full knowledge of Lawler and Wells, when they executed the Cowland agreement and placed it unrecorded in the bank, that Warner had planned and then intended to organize a company to take possession and title of the property and wholly upon the basis of such property to offer the
corporate stock to the public for popular subscription?

598 Second. This honorable court assumes it to be a fact that Lawler and Wells knew nothing of the contents of the prospectus. To this conclusion the undisputed facts and overwhelming evidence *is* in direct contradiction.

(1.) Judge Wells received a copy of the prospectus and map while holding court at Flagstaff.

(2.) Jack Lawler had a copy of the prospectus in his possession at Prescott in October, 1892.

(3.) Lawler had in his possession a copy of the New York Herald containing the prospectus in flaring print.

(4.) Lawler was interviewed touching the prospectus by Mr. Martin, proprietor of the Prescott Journal Miner, in November, 1892 (Rickart, Abst., 231).

(5.) Lawler saw the article in the Journal Miner written after this interview (Abst. 231; Rickart, 169).

(6.) Five witnesses testify as to Lawler's full knowledge in New York city.

(7.) Both Lawler and Wells saw article in Engineering and Mining Journal criticising Warner's methods in floating the property (Abst. 169).

(8.) Rickart had several conversations at Burke hotel with Lawler touching the prospectus (Abst. 171).

(9.) "Lawler examined the prospectus in my presence," testified Hedges (Abst. 172).

(10.) Prospectus was circulated in Prescott, and both Law-
599 ler and Wells were fully cognizant of the fact. This is expressly admitted by Lawler (Abst. 231):

"Q. November 12th, 1892, you heard of the prospectus being circulated around in this country here?"

"A. Yes sir."

(11.) The Bank of Arizona, which, by the express terms of the Cowland contract, was the agent of Lawler and Wells in such manner as to make its knowledge their knowledge, wrote to the New York office for prospectuses of the company on October 11th, 1892, saying to Mr. Earl, "Will you kindly send us a few of the prospectuses of the Seven Stars Gold Mining Company?"

(12.) The American prospectus was printed at large in a number of newspapers on October 1st, 1892, and this general advertisement created wide comment. Lawler testified that he knew "what news was running all over the country." (See testimony of Herbert, Abst. 158, and letter of printer, Abst. 202.)

(13.) Kennard testified (Abst. 141):

"Lawler saw the original draft of the prospectus and expressed himself as well pleased with it. * * * The proposed prospectus was read to Lawler in the office at No. 41 Broadway, in my hearing, and he saw the proofs of same as furnished by the printer."

No solemn admission, written, signed and sealed, could es-
600 tablish a fact more firmly against a party than the testimony found in this record that the prospectuses were circulated about Prescott, were received by Lawler and Wells, read and examined by them, their contents known to them, and they, as Lawler blurted out on the stand, were wholly indifferent to the prospectus.

Is it true to the record, then, in the presence of all this, to say, (page 23 of opinion): "There is no evidence that they (Lawler and Wells) knew the statements or representations contained in the prospectus or on the map"?

Third. This honorable court assumes it to be a fact that "Lawler and Wells did not *at any time prior to the commencement of this action* have any knowledge or notice that any money received by them on account of the purchase price" of the property came from the money of the subscribers to the stock of the Seven Stars Gold Mining Company.

The evidence is so clear and emphatic, so probable and so conclusive to the contrary, that we cannot but believe that this court entirely overlooked the evidence touching this point. No man can actually read the plain language of letters and witnesses and per-

suade himself of such ignorance of Lawler and Wells. On May 20th, 1893, Lawler received a letter from the office of the Seven Stars Gold Mining Company (Abst. 242), saying that Kennard had left no stone unturned to raise money to cancel the obligations on the Cowland contract, but he was handicapped by the stringency
601 in the money market, which had made "his efforts to place "the stock of the Seven Stars Gold Mining Company very "difficult."

And yet Lawler was in dense ignorance of the fact that the sale of stock had anything to do with the payment of his money.

Another letter: Lawler wrote Kennard on July 20th, 1893 (Abst. 207):

"Mr. Sutherland, who was connected with the firm of Fraser & "Chalmers in Chicago up to January last, and who, as you may re- "member, made very favorable mention of the Seven Stars mines "to those whom he knew as desirous of investing in its stock, is now "in town, and tells me that he continues to feel very partial to the "Hillside group, and asserts that the mines, as he saw them, showed "him the best properties that he had seen for years," etc.

Does this language bespeak the mind of a man in total ignorance of and wholly devoid of interest in the sale of the stock of the Seven Stars Company?

Another letter: The letter of the Bank of Arizona, asking for more prospectuses of the company. This bank, under the express provisions of the contract, was the agent of Lawler and Wells. Its knowledge was their knowledge. It was continually receiving the money of the subscribers and placing that money to the credit of Lawler and Wells.

602 Bear in mind, too, the full knowledge of Lawler and Wells of the prospectus. Were they so dull and stupid as not to know that it was circulated to sell stock; and were they so ignorant as to think that the sale of the stock of that company, upon the basis of the Hillside property, which it described and lauded in flaring print, had no connection with the acquisition of title to and payment for that property? Will this honorable court gratuitously impute to two leading citizens of the Territory such inhuman ignorance of the daily methods of men in their own business?

But what did Lawler and Wells dream was the source of the money? When stock sales stopped payments to Lawler and Wells stopped. We beg the court to fairly read the testimony on this point. Footner testified, (Abst. 150):

"I thoroughly explained to Mr. Lawler that it was Mr. Warner's "intention, and that he was at that time working on the subject, to "form a company for the development of the mining company, and "to issue stock to cover the same. Mr. Lawler expressed himself to "me as being perfectly well aware of Mr. Warner's intentions, he hav- "ing had conversations with him concerning the matter (Abst. 154). "In conclusion I would state that if it is fact that both John Lawler "and Ed. W. Wells claim to have no knowledge that it was the in- "tention of H. H. Warner and the Industrial Company to form a "company called the Seven Stars Gold Mining Company for the

"sale of the mines in question by means of receiving sub-
603 "scriptions from the company to realize the necessary sum of
"money to pay the balance due on the mines, I cannot see
"how it is possible for two intelligent men such as they are to be in
"such dense ignorance of the transaction which the Industrial Com-
"pany did their best to inform them of by means of sending pro-
"spectuses of the company, and notably to my own knowledge,
"the conversation had by me with John Lawler while in New
"York," etc.

But even John Lawler, when on the witness stand, did not dare, in the presence of the overwhelming testimony and irresistible probabilities, to dispute that he had received the money of the subscribers to the Seven Stars stock. He was questioned regarding this matter (Abst. 228):

"Q. Do you know how much money you received from the sale of stock of this Seven Stars Gold Mining Company?"

"A. No sir, I could not state that."

"Q. Do you know whether you received any or not?"

"A. No sir, I could not state that."

Judge Wells testifies that, when Warner came to ask for an extension, "he said he had not realized upon his securities to the extent that he could make the payment." What securities? The stock of the Seven Stars Company, which he was trying to put before the public. To argue that Judge Wells did not know this is to argue him incapable of understanding plain English speech.

More than this, while this honorable court holds that
604 Judge Wells did not know before the commencement of the suit that his money was coming from the pockets of the subscribers, yet he himself expressly admits that in June, 1893, when Kennard was in Prescott seeking another extension, he apprized Judge Wells of the fact that stock was being sold. What does this mean? It means that he told Judge Wells that he wanted an extension, because stock sales were difficult on account of the money stringency, as he stated in the letter to Lawler, and therefore they wanted another extension in order to defraud the public out of more money.

Hedges, a wholly disinterested witness and one whose testimony no man can fairly read without believing, stated that in seeking an extension from Lawler, "he urged upon him as a reason for giving the extension asked for, that the stock of the Seven Stars Gold Mining Company had been extensively advertized; that it had been purchased by people in different parts of the country, and should the mine fail after such advertisement, and the large interests that had already been acquired by stockholders, it would hurt the mine more, so far as he was concerned, than to take it back and try to float it again, than if he would give an extension and allow the mine to work out its own salvation. He stated to me that he recognized that situation; that he had full faith in the ability of the mine to work itself out, and that one of the reasons that would lead him

to give such an extension, did he so give it, would be the con-
605 siderations that I suggested to him, and which I have just referred to. * * * I had several copies of the prospectus of the company, both in Prescott, and Chicago, I showed them to Lawler, he examined them in my presence, and we discussed the mode and manner of the attempted general sale of the stock of the company. Lawler insisted upon being paid a certain amount as manager. A contract of extension was finally signed." (Abst. 171, 172.)

His honor, Judge Truesdale, the only judge who heard the witnesses testify, who saw their manner of testifying, and who was best able to make distinctions on grounds of credibility, found as an overwhelmingly established fact in the case, that Warner and Cowland "were either obliged or intended to look to the receipts from the sale of stock in this corporation, and from ore and bullion, to make the future payments," of which Lawler and Wells had notice. (Abst. 63.)

Is it just to ignore these plain letters, admissions of Wells and Lawler, uncontradicted testimony, and irrepressible probabilities, and say to these unfortunate stockholders that it is true Lawler and Wells were continually receiving your money, but they did not know it was your money until after this suit was begun?

Fourth. The court assumes it to be a fact that the map of the property which bore the inscription "Map of the group of
606 mines belonging to the Seven Stars Gold Mining Company" was changed after Lawler had seen it in New York city. We have searched the record in vain for a scintilla of evidence in proof of this assumed fact.

Proofs of the map were received from the printer before August 31st, 1892, the day of Lawler's arrival in New York (see telegram from printer, Abst. 201). Thus these proofs were in the office at the time of the arrival of Lawler; and there is not an intimation anywhere that after the date of this telegram a single solitary change was made in the map or in its endorsement. Warner, Rickart, Footner, Herbert and Kennard, all say that Lawler saw the completed map.

But, more than this, the map as completed was circulated with the prospectus and was received by Judge Wells, and by Jack Lawler, and was in their possession, was in the possession of various citizens of Prescott, was discussed by Lawler and Wells with Rickart, Kennard and Hedges—in a word, all the evidence overwhelmingly showing their acquaintance with the prospectus equally applies to the map, which was enfolded and circulated with it.

Fifth. The court assumes as a fact that the English prospectus was changed after it was seen by Lawler in New York. The evidence of five witnesses is that the completed English prospectus was shown to, discussed and read by Lawler. It is wholly immaterial that the prospectus was changed by the insertion of one
607 clause after its authorization by the board of directors of the Industrial Company. The rights of these innocent subscribers do not depend on the authorization of the Industrial Com-

pany, a company they never heard of. If they have any rights, they spring from the fact that a prospectus was circulated which deceived them, and that Lawler and Wells were acquainted with the contents of that prospectus and acquiesced in its circulation, and received the moneys which they paid upon the truth of its representations.

But, aside from the clause in the English prospectus, that "The mines owned by the company are situated in the Eureka mining district, Yavapai county, Arizona," aside from that *cal*use, the English prospectus must carry the representation to any fair reader that the company owned the mines which it was describing.

The established rule of equity is that a concealment of any adverse interest or lien is equivalent to negation; and the English prospectus neither mentions nor suggests in the slightest degree the string which Lawler and Wells had to the title to the property, in the vault in the Bank of Arizona.

This honorable court fails to give any weight whatever to the fact that twenty-one purchasers of the stock of the Seven Stars Gold Mining Company, most of whom are appellants herein, testified as follows:

(*a*.) Each relied upon the statements contained in the prospectus and map as distributed, and believed from examination
608 thereof that the Seven Stars Gold Mining Company was the absolute owner of the mines and property therein mentioned and referred to;

(*b*.) That they would not have purchased were it not for such belief; and

(*c*.) That they had no knowledge outside of the prospectus and map touching the ownership of the property.

There is no evidence in support of the statement in the opinion of this honorable court that the English prospectus was circulated without the authority of the Industrial Company or the Seven Stars Gold Mining Company, and was "prepared, supervised and circulated by Charles Cowland."

This honorable court is clearly mistaken in its statement that the circulation of the prospectus began about the 20th day of September, 1892. The printer testified (Abst. 172) that the prospectuses and maps were printed between September 23rd and 26th. The distributing agent testified that the first order for distribution was given on September 28th, 1892, "and the distribution was made within three weeks from the date of the order" (Abst. 173).

## II.

This honorable court misconceived and misapplies to the facts of this case the doctrine of equitable estoppel. It is clearly not the law, as stated by this honorable court, that a party in order
609 to be estopped must himself falsely represent a fact to the deception of him who claims the estoppel. It is sufficient if the real owner of the property stands by, silently, and permits his property to be sold to an innocent purchaser, or permits an innocent party to purchase an interest therein, without asserting his

superior claim. A mere failure to give notice of a right, where another without knowledge of the facts is investing his money and where it may be fairly concluded that he would not do so if informed of the facts, will generally preclude a subsequent setting up of the claim thus sold.

This honorable court, in its opinion, wholly repudiates the doctrine of estoppel by silence. It gives to the equitable doctrine of estoppel a narrow and almost destructive construction. The conclusion of the court is in direct conflict with the following cases cited in our brief:

Jones *vs.* Bolles, 9 Wallace, 364;
Ford *vs.* Loomis, 33 Mich., 120;
Anderson *vs.* Hubbell, 93 Indiana, 570;
Field *vs.* Doyon, 64 Wis., 560;
Brewster *vs.* Baker, 16 Barbour, 613;
Bank *vs.* Roop, 48 N. Y., 292.

We beg the court to read and study once more, in connection with this case, the authorities cited and quoted in the brief filed in this cause for appellants.

III.

The decision of affirmance herein is contrary to law, because the conduct of Lawler and Wells, their silence and acquiescence,
610 and their receipt of the money of the subscribers to the stock of the Seven Stars Gold Mining Company, in equity estopped them from asserting their title to the mining property in question, under and in virtue of the Cowland agreement.

IV.

The decision of this honorable court is in direct conflict with the undisputed evidence of record.

V.

This honorable court has manifestly and gravely erred in not directing a money decree, in accordance with the alternative prayer of the complaint. Upon this point we beg the court to reconsider its language, in which it dismissed, practically without any consideration, the contention under point II of the brief filed for appellants.

Upon the foregoing grounds we earnestly urge this honorable court to read again this record, believing, as we do, that its view of this case as disclosed in the opinion excludes from consideration important undisputed and unquestionably established facts and that its application of the doctrine of estoppel is unprecedently narrow and virtually strikes from the law of the Territory the wholesome doctrine of estoppel by silence.

Respectfully submitted.

KRETZINGER, GALLAGHER AND ROONEY,
*Counsel for Appellants.*

611 Counsel for appellees are:
Judge E. M. Sanford, Hon. J. F. Wilson, and Messrs. Hern-

don & Norris, all of whom reside at Prescott, Yavapai county, Arizona.

(Endorsed:) No. 651. In the supreme court of the Territory of Arizona. Wiser *et al. vs.* Lawler *et al.* Petition for rehearing. Filed Nov. 23, 1900. Thomas Grindell, clerk.

612 In the Supreme Court of the Territory of Arizona.

CLINTON B. WISER ET AL., Appellants,
*vs.*
JOHN LAWLER ET AL., Appellees. } No. 651.

*Precept.*

The Territory of Arizona to the sheriff of Yavapai county, Greeting:

Whereas, on an appeal in the above-entitled cause by the appellant herein, the supreme court of the Territory of Arizona, did on the ninth day of November, 1900, render judgment in said cause affirming the judgment of the court below; and whereas the above-named appellants did, on the 23rd day of November, 1900, and within fifteen days after the rendition of said judgment by said supreme court, file in the office of the clerk of said court, its certain motion for rehearing of said cause, a duly certified copy of which motion accompanies this precept.

Now, therefore, you are hereby commanded that you deliver said certified copy of the said motion for rehearing to Messrs. Herndon & Norris attorneys of record for appellees whose residence and place of business is Prescott, Arizona, and that you make the return
613 of this precept with your proceedings thereunder entered thereon, to this court forthwith.

Witness, the Honorable Webster Street chief justice of the supreme court of the Territory of Arizona, and the seal of said court.

Done at Phœnix, the capital of Arizona, this 23rd day of November, 1900.

[SEAL.]

THOMAS GRINDELL,
*Clerk of the Supreme Court of Arizona.*

OFFICE OF THE SHERIFF OF YAVAPAI COUNTY, ARIZONA, *ss:*

I hereby certify, that I received the within annexed precept on the 24th day of November, 1900, and personally served the same on the 24th day of November, 1900, by delivering personally the within mentioned certified copy of the said motion for rehearing to Messrs. Herndon and Norris, in the city of Prescott, Yavapai county, Arizona Territory.

Dated, Prescott, November 24th, 1900.

J. L. MUNDS, *Sheriff.*

A. A. JOHNS,
*Undersheriff.*

(Endorsed:) In the supreme court of the Territory of Arizona No. 651 Nov. term 1900. Clinton B. Wiser, *et al.* appellants, vs. John Lawler, *et al.* appellees. Precept. Office of the sheriff of Yavapai county, Arizona. Received Nove. 24th, 1900, at 9 o'clock a. m. J. L. Munds, sheriff. By A. A. Johns, undersheriff. Filed Nov. 26, 1900. Thomas Grindell, clerk.

614 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*vs.*
JOHN LAWLER ET AL., Defendants and Appellees.

Come now the said appellants, by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its findings of fact herein the following material and undisputed fact:

Lawler and Wells had notice on or before the date of the execution of the Cowland contract that Warner intended to float the mining property in question in the form of a stock company and offer the stock to the public for general subscription.

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.* appellants, *v.* John Lawler *et als.* appellees. Motion. Filed Jan. 21st, 1901. Thos. Grindell clerk.

615 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*vs.*
JOHN LAWLER ET AL., Defendants and Appellees.

Now come the said appellants, by Kretzinger, Gallagher and Rooney, their counsel, and move this court to include in its findings of fact for the Supreme Court of the United States the following material and undisputed fact:

The chief promoter of the Seven Stars Gold Mining Company, was H. H. Warner. His scheme in organizing that company was to operate this mining property in its name and to offer the stock of the company for public sale and out of the proceeds of the operation and sale of stock make the deferred payments under the escrow agreement.

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.* appellants, *v.* John Lawler *et al.*, appellees. Motion. Filed Jan. 21, 1901. Thos. Grindell, clerk.

616 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*v.*
JOHN LAWLER ET AL., Defendants and Appellees.

Now come the said appellants, by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its findings of fact for the Supreme Court of the United States the following material and undisputed fact:

Remittances to the Bank of Arizona for Lawler and Wells after November 1, 1892, were placed to the credit of the Seven Stars Gold Mining Company.

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.* appellants *v.* John Lawler *et al.*, appellees. Motion. Filed Jan. 21, 1901. Thos. Grindell, clerk.

617 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*v.*
JOHN LAWLER ET AL., Defendants and Appellees.

Come now the said appellants, by Kretzinger, Gallagher and Rooney, their counsel and move the court to include in its findings of fact herein for the Supreme Court of the United States the following material and undisputed fact:

On May 20, 1893, Lawler received notice in writing that remittances on account of the Cowland contract were being made from moneys derived from the sale of the stock of the Seven Stars Gold Mining Company.

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al. v.* John Lawler, *et al.* Motion. Filed Jan. 21, 1901. Thos. Grindell, clerk.

618 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*v.*
JOHN LAWLER ET AL., Defendants and Appellees.

Come now the appellants by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its findings of fact herein, the following and material undisputed *dact*:

That the Bank of Arizona within a few days after October 11, 1892, received by mail and had in its possession three copies of the American prospectus and map.

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.*, appellants, *v.* John Lawler, *et al.*, appellees. Motion. Filed Jan. 21, 1901. Thos. Grindell, clerk.

619 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*v.*
JOHN LAWLER ET AL., Defendants and Appellees.

Come now the said appellants by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its findings of fact herein for the Supreme Court of the United States the following material and undisputed fact:

The American prospectus map and subscription form were circulated about Prescott to the knowledge of Lawler and Wells.

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser *et al.*, *v.* John Lawler, *et al.* Motion. Filed Jan. 21, 1901. Thos. Grindell, clerk.

620 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*v.*
JOHN LAWLER ET AL., Defendants and Appellees.

Come now the said appellants by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its findings of fact herein for the Supreme Court of the United States the following material and undisputed fact:

From and after November 1, 1892, Warner and his associates expected and intended to meet the payments on the mine out of the proceeds of the operation of the property and the sale of stock of the Seven Stars Gold Mining Company and depended on such proceeds to make such payments.

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.*, appellants, *v.* John Lawler *et al.*, appellees. Motion. Filed Jan. 21st, 1901. Thos. Grindell, clerk.

621 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*v.*
JOHN LAWLER ET AL., Defendants and Appellees.

Come now the said appellants, by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its findings of fact herein for the Supreme Court of the United States the following material and undisputed fact:

Before July 25, 1893, Lawler had personal knowledge that persons were being induced orally to purchase stock in the Seven Stars Gold Mining Company by representations as to the merits of the mining property in question.

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser *et al.*, *v.* John Lawler *et al.* Motion. Filed Jan. 21, 1901. Thos. Grindell, clerk.

622 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*v.*
JOHN LAWLER ET AL., Defendants and Appellees.

Come now the said appellants by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its findings of fact herein for the Supreme Court of the United States the following material and undisputed fact:

Beginning on September 28, 1892, and during three weeks thereafter, 300,000 copies of the American prospectus, maps and blank subscription forms were mailed together, three in one envelope, throughout the United States.

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.*, appellants, *v.* John Lawler, *et al.*, appellees. Motion. Filed Jan. 21, 1901. Thos. Grindell, clerk.

623 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Plaintiffs and Appellants,
*v.*
JOHN LAWLER ET AL., Defendants and Appellees.

Now come the said appellants by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its find-

ings of fact herein for the Supreme Court of the United States the following material and undisputed fact:

The distributed English prospectus was the same as was attached to the complaint. This prospectus as it there appears was approved by the directors of the Industrial Company, with this exception: The third paragraph of the prospectus approved read, "the mines are situated in the Eureka mining district, Yavapai county, Arizona," while said paragraph of the prospectus as finally printed and distributed in England read: "The mines owned by the company are situated in the Eureka mining district, Yavapai county."

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.*, appellants, *v.* John Lawler, *et al.*, appellees. Motion. Filed Jan. 21, 1901. Thos. Grindell, clerk.

624 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Appellants,
*v.*
JOHN LAWLER ET AL., Appellees.

Now come the said appellants by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its findings of fact herein for the Supreme Court of the United States the following material and undisputed fact:

The Seven Stars Gold Mining Company had no property other than its interest in said mines and no source of income other than the sale of its stock.

KRETZINGER, GALLAGHER AND ROONEY,
*Att'ys for Appellants.*

(Endorsed:) No. 651. Supreme court. Territory of Arizona. Clinton B. Wiser, *et al.*, *v.* John Lawler, *et al.* Motion. Filed Jan. 21, 1: 01. Thos. Grindell, clerk.

625 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL., Appellants,
*v.*
JOHN LAWLER and Others, Appellees.

Come now the said appellants, by Kretzinger, Gallagher and Rooney, their counsel, and move the court to include in its findings of fact for the Supreme Court of the United States herein, the following material and undisputed fact:

In May, 1893, defendant Wells was personally and verbally notified by the assignee of H. H. Warner of the wide sale of stock of the Seven Stars Gold Mining Company.

KRETZINGER, GALLAGHER AND ROONEY,
*For Appellants.*

(Endorsed:) No. 651. Supreme court. Territory of Arizona. Clinton B. Wiser, *et al.*, *v.* John Lawler, *et al.* Motion. Filed Jan. 21, 1901. Thos. Grindell, clerk.

626 In the Supreme Court of the Territory of Arizona.

CLINTON B. WISER, C. M. FIELD, JOHN A. KERR, JAMES A. Ferguson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, Appellants,

*vs.*

JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD MINing Company, Industrial Mining & Guaranty Company, and John Griffin, Receiver, Appellees.

No. 651.

Be it remembered that on Tuesday, January 10th, 1899, that being a regular judicial day of the January term, 1899, of said court in and for said Territory then holden, the parties to the above-entitled action by their attorneys, being present, the following record of this case for this day was made, to wit:

Title of Cause.

It is ordered that this cause be set for hearing on January 26th, 1899.

On Friday, January 13th, 1899, that being a regular judicial day of the January term, 1899, of said court, the following record in this case was made for this day, to wit:

627 Title of Cause.

On motion of Mr. T. W. Johnston, attorney for appellants, permission was granted him by the court to file motion for statement of facts.

On Saturday, January 14th, 1899, that being a regular judicial day of the January term, 1899 of said court, the following record in this case was made this day, to wit:

Title of Cause.

In this cause it is ordered that the motion for statement of facts, filed herein by appellants, be submitted.

On Thursday, January 26th, 1899, that being a regular judicial day of the January term 1899 of said court, the following record of this case was made this day, to wit:

Title of Cause.

This cause came on for hearing, and on motion of J. F. Wilson, attorney for appellees, it was ordered that this cause be passed until

tomorrow, at 9.30 a. m., so Mr. J. C. Herndon, one of the counsel for appellees could be present at the arguing of this cause, as was agreed by counsel on both sides.

On Friday January 27th, 1899, that being a regular judicial day of the January term, 1899, of said court, the following record
628 of this case for this day was made, to wit:

Title of Cause.

This cause coming on for hearing, the argument was opened by Mr. Gallagher, counsel for appellants, and followed by Mr. Herndon counsel for appellees, and the argument continued until after recess.

After recess court reconvened and the following record of this case was made, to wit:

Title of Cause.

This cause being continued from the morning session, argument was resumed by Mr. Wilson on behalf of appellees.

The hour for adjournment having arrived, it was ordered that this cause be continued until Saturday morning at 9.30 o'clock.

On Saturday January 28th, 1899, that being a regular judicial day of the January term 1899 of said court, the following record of this case for this day was made, to wit:

Title of Cause.

This cause being continued from Friday's session, argument was resumed by Mr. Sanford on behalf of counsel for appellees, and the argument was closed by Mr. Kretzinger, counsel for appellants, and cause ordered submitted.

629 On Friday, November 9th, 1900, that being a regular judicial day of the November term, 1900 of said court, the following record of this case was made for this day, to wit:

Title of Cause.

This cause having been heretofore submitted, and by the court taken under consideration, and the court having considered the same and being fully advised in the premises: It is ordered that the judgment and decree of the lower court be and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the appellees herein, John Lawler and Ed. W. Wells, do have and recover of and from the appellants herein, and Henry Kingsley and E. B. Gage, sureties on appeal bond, their costs in this court taxed at fifty-six and $\frac{70}{100}$ ($56.70) dollars, and their costs in the district court in this cause incurred, taxed at one hundred and seven and $\frac{7}{100}$ ($107.07) dollars.

On Monday, January 21st, 1901, that being a regular judicial day of the January term, 1901 of said court, the following record was this day made in this case, to wit:

Title of Cause.

It is ordered that the motion for rehearing filed herein by appellants, be and the same is hereby denied.

630 On motion of Mr. Gallagher, attorney for appellants herein, it is ordered that he be granted a hearing at 11 a. m. today.

Also the following order was made on January 21st, 1901, in this cause, to wit:

Title of Cause.

On motion of Mr. Gallagher, for appellants, it is ordered that he have leave to file petition and order for appeal. Mr. J. C. Herndon objects to last paragraph in order for appeal.

On motion of Mr. Gallagher, it is ordered that he have leave to file additional matter with reference to findings of fact. It is further ordered that he have leave to file eleven other additional propositions of finding.

631 In the Supreme Court of the Territory of Arizona.

CLINTON B. WISER ET AL., Appellants,
*vs.*
JOHN LAWLER ET AL., Appellees.

TERRITORY OF ARIZONA, *Maricopa County*, } *ss*:

M. F. Gallagher, being first duly sworn, deposes and says, that he is one of the attorneys of record for the appellants herein, and their agent in this behalf.

That the matters in dispute in the above-entitled cause exceed in value the sum of five thousand dollars ($5000.00) exclusive of costs, being the amount of the mining property involved and the money sought to be recovered therein.

M. F. GALLAGHER.

Subscribed and sworn to before me, this 21st day of January, A. D. 1901.

[SEAL.] THOMAS GRINDELL,
*Clerk Supreme Court, Territory of Arizona.*

(Endorsed:) No. 651. In the supreme court of the Territory of Arizona. Clinton B. Wiser, *et al.*, appellants, *v.* John Lawler, *et al.*, appellees. Affidavit as to amount in controversy. Filed Jan. 21, 1901. Thos. Grindell, clerk.

632 In the Supreme Court of the Territory of Arizona.

CLINTON B. WISER ET AL., Appellants,
*vs.*
JOHN LAWLER ET AL., Appellees.

Come now the plaintiffs and appellants herein, Clinton B. Wiser, C. M. Field, John A. Kerr; James A. Ferguson; Dorsey Neville;

Mary M. Heath; John J. Miller; Henry L. Mugsford; William J. Foster; Edgar G. Miller; L. F. Hiorne; Sidney G. Law; Edward M. Smith; Harper M. Smith; Benjamin Goodman; Lester M. Crouch; John B. Clute; Katie T. Courtney; H. S. Anders and Cecil Quentin, and respectfully represent unto this honorable court that the matters in dispute in the above-entitled cause exceed in value the sum of five thousand dollars ($5,000.00) exclusive of costs, and pray this honorable — to grant them an appeal herein from the decision and judgment of affirmance of this court to the Supreme Court of the United States, upon the filing of an appeal bond herein in such amount and within such time as this honorable court may order.

And your petitioners will ever pray.

Phœnix, Arizona, Jan. 21, 1901.

CLINTON B. WISER,
C. M. FIELD,
JOHN A. KERR,
JAMES A. FERGUSON,
DORSEY NEVILLE,
MARY M. HEATH,
JOHN J. MILLER,
HENRY L. MUGSFORD,
633 WILLIAM J. FOSTER,
EDGAR G. MILLER,
L. F. HIORNE,
SIDNEY G. LAW,
EDWARD M. SMITH,
HARPER M. SMITH,
BENJAMIN GOODMAN,
LESTER M. CROUCH,
JOHN B. CLUTE,
KATIE T. COURTNEY,
H. S. ANDERS,
CECIL QUINTEN,
By KRETZINGER, GALLAGHER AND ROONEY, *Their Solicitors.*

G. W. KRETZINGER,
M. F. GALLAGHER,
*Of Counsel.*

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.*, appellants, *v.* John Lawler, *et al.*, appellees. Petition for appeal. Filed Jan. 21, 1901. Thos. Grindell, clerk.

634 In the Supreme Court of the Territory of Arizona, January Term, A. D. 1901.

CLINTON B. WISER ET AL. }
*v.*
JOHN LAWLER ET AL. }

And the above-entitled cause coming on to be heard upon the petition of Clinton B. Wiser, C. M. Field, John A. Kerr, James A. Ferguson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L.

Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, plaintiffs and appellants herein, for an appeal from the decision and judgment of affirmance of this court to the Supreme Court of the United States, and all parties being represented and the court having said petition and the affidavit as to the amount in controversy filed therewith, and being fully advised in the premises, and it appearing to the court that the matters in dispute in the above-entitled cause exceed in value the sum of five thousand dollars ($5,000.00) exclusive of costs:

It is ordered that an appeal be and the same is hereby granted to Clinton B. Wiser, C. M. Field, John A. Kerr, James A. Ferguson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford,
William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G.
635 Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders and Cecil Quinten, plaintiffs and appellants herein, from the judgment of affirmance of this court herein rendered on the 9th day of November, A. D. 1900, to the Supreme Court of the United States, upon the filing herein of an appeal bond, with two or more sufficient sureties to be approved by the chief justice of this court, in the penal sum of two thousand dollars ($2,000.00) within twenty days from the date of the entry of this order; citation to duly issue upon the filing of such bond; remittitur hereby stayed for twenty days.

It is further ordered by consent of all parties, that because of the large number of appellants herein and their distant and diverse residences, an appeal bond bearing the signatures of all appellants by M. F. Gallagher, their agent, with security approved as aforesaid, will be a sufficient appeal bond in the premises.

It is further ordered that either party to the above-entitled cause may have thirty (30) days from the date of the entry of this order to prepare and file such exceptions in writing as they may be advised to any of the findings of fact made herein by this court or refusals of this court to make findings requested.

WEBSTER STREET,
*Chief Justice.*

636 Time is hereby extended until July 1st, 1901 for bill of exceptions.

WEBSTER STREET,
*Chief Justice.*

Dated April 30, 1901.

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.*, appellants, *v.* John Lawler, *et al.*, appellees. Order for appeal. Filed Jan. 21, 1901. Thos. Grindell, clerk.

637 Know all men by these presents: That we, Clinton B. Wiser, C. M. Field, John A. Kerr, James A. Ferguson, Dorsay Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Ed-

ward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, as principals, and William H. Robinson, William J. Murphy, as sureties, are hereby held and firmly bound unto John Lawler, Edward W. Wells, Industrial Mining and Guaranty Company, Seven Stars Gold Mining Company, and John Griffin, receiver of Seven Stars Gold Mining Company, jointly and severally, in the penal sum of two thousand ($2,000) dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our and each of our heirs, executors and administrators, jointly and severally by these presents.

The condition of the above obligation is such, that whereas, the said appellants and principals, Clinton B. Wiser, C. M. Field, John A. Kerr, James A. Ferguson, Dorsay Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, have been duly granted an appeal to the Supreme Court of the United States from a judgment of affirmance rendered in the above-entitled cause by
638 the supreme court of the Territory of Arizona, on the 9th day of November, A. D. 1900. Now, if the above-named principals and appellants shall duly prosecute their said appeal with effect, and moreover forthwith pay all costs and expenses that may be adjudged against them in case said judgment of affirmance is by the Supreme Court of the United States affirmed, then this obligation shall be void; otherwise to remain in full force and effect.

Witness our hands and seals this twenty-first day of January, A. D. 1901.

WILLIAM J. MURPHY, *Surety.* [SEAL.]
WILLIAM H. ROBINSON, *Surety.* [SEAL.]
CLINTON B. WISER, [SEAL.]
C. M. FIELD, [SEAL.]
JOHN A. KERR, [SEAL.]
JAMES A. FERGUSON, [SEAL.]
DORSAY NEVILLE, [SEAL.]
MARY M. HEATH, [SEAL.]
JOHN J. MILLER, [SEAL.]
HENRY L. MUGSFORD, [SEAL.]
WILLIAM J. FOSTER, [SEAL.]
EDGAR G. MILLER, [SEAL.]
L. F. HIORNE, [SEAL.]
SIDNEY G. LAW, [SEAL.]
EDWARD M. SMITH, [SEAL.]
HARPER M. SMITH, [SEAL.]
BENJAMIN GOODMAN, [SEAL.]
LESTER M. CROUCH, [SEAL.]
JOHN B. CLUTE, [SEAL.]
KATIE T. COURTNEY, [SEAL.]
H. S. ANDERS, [SEAL.]
CECIL QUINTEN, [SEAL.]

*Appellants and Principals,*

By M. F. GALLAGHER, *Their Agent.*

639 TERRITORY OF ARIZONA, } ss:
*Maricopa County,* }

William J. Murphy, being first duly sworn says, that he is a resident householder of Maricopa county, Territory of Arizona, and one of the sureties signing the foregoing bond. That he now owns real estate located in Maricopa county, Territory of Arizona, of value to exceed five thousand dollars.

WILLIAM J. MURPHY.

Subscribed and sworn to before me this 21st day of January, A. D., 1901.

W. H. ROBINSON,
*Notary Public.*

[SEAL.]

TERRITORY OF ARIZONA, } ss:
*Maricopa County,* }

William H. Robinson, on oath says that he is a resident householder and freeholder in Phœnix Maricopa county, Arizona, and that he owns real estate in said county of value to exceed five thousand dollars.

WILLIAM H. ROBINSON.

Subscribed and sworn to before me this 21st day of January A. D. 1901.

L. J. RICE,
*Notary Public, Maricopa County.*

[SEAL.]

Com. expires Dec. 29, 1903.

(Endorsed:) No. 651. Supreme court, Territory of Arizona. Clinton B. Wiser, *et al.* appellants, *v.* John Lawler *et al.*, appellees. Appeal bond. Approved Jan. 22, 1901. Webster Street, chief justice. Filed M'ch 23, 1901. Thos. Grindell, clerk.

640 In the Supreme Court of the Territory of Arizona, January Term, 1900.

CLINTON B. WISER, C. M. FIELD, JOHN KERR, JAMES A. FURgeson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William F. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quentin, Appellants,

*vs.*

JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD MINING Company, Industrial Mining & Guaranty Company, and John Griffin, Receiver, Appellees.

Appeal from the district court of Yavapai county, Hon. Webster Street, judge.

T. W. Johnston and Kretzinger, Gallagher & Rooney, attorneys for appellants.

E. M. Sanford, J. F. Wilson, and Herndon & Norris, attorneys for appellees.

*Findings of Fact.*

The supreme court of the Territory of Arizona do hereby, in the above-entitled proceeding, find the following facts:

1. That on the 12th day of May, 1892, ever since and now, the defendants, John Lawler and Ed. W. Wells were and are the
641 owners of the legal title to the mines and mining claims located in the Eureka mining district in Yavapai county, Arizona, known as "Hillside," "Happy Jack," "Contact No. 1," "Contact No. 2" and "Camp;" and locations known as "Midnight," "Morning Glory," "Water," "Hidden Treasure," "Sucker," "Side," "Purple Rose," "Southern Belle," "Robert E. Lee," "Luck Cuss," "Centipede" and "Good Enough," which are hereby denominated and will be hereinafter referred to as the "Hillside group of mines." The muniments showing such title in Lawler and Wells were then, and ever since have been and are now of record in the office of the county recorder of Yavapai county, Territory of Arizona, where said mines are situate; that John Lawler and Ed. W. Wells were and are cotenants in said group of mines, the said Lawler owning an undivided three-fourth- interest therein and the said Wells owning an undivided one-fourth interest therein.

2. That prior to May 12th 1892, the defendants John Lawler and Ed. W. Wells offered said mines for sale at the purchase price of four hundred and fifty thousand dollars ($450,000) cash.

3. That a few days prior to May 12th, 1892, H. H. Warner visited this group of mines with T. A. Rickard, a mining expert, and examined the same. After such examination he contracted for the purchase of said group from Lawler and Wells for the sum of $450,000, paying $20,000 in cash, the remainder payable in installments, in accordance with the terms of an escrow agreement entered
642 into on May 12th, 1892, by and between John Lawler and Ed. W. Wells on the one part and Charles Cow-

land on the other part, which provided, among other things that "the deed conveying the mine to Cowland be annexed to said agreement and shall be held in escrow with the Bank of Arizona, at Prescott, Arizona, to be held and delivered by the bank upon the following conditions only: The bank to deliver the deed to Cowland, his heirs or assigns, upon his or their paying or causing to be paid, as herein provided for, the full sum of $450,000. In case of failure of said Cowland in making or causing to be made any of said payments of money at the time or times and in the manner herein stated, then the said Bank of Arizona, upon demand being made thereupon by said Lawler and Wells, shall deliver said deed to Lawler and Wells, or their representatives, and in the event of such failure of said Cowland to make or cause to be made any of the said payments, then all payments of money theretofore made by said Cowland on the purchase price of said property shall be forfeited by him, and he agrees and covenants with said Lawler and Wells that all money paid by him as purchase-money on said property shall belong to them and be retained by them as liquidated damages accruing to them for the failure of said Cowland to purchase, take and pay for said property as hereinabove stated and stipulated and the said Lawler and Wells shall be at once released and discharged from any further duty or obligation
643 to sell and convey the property. It is further agreed that said Cowland, by himself and his agents, may at once enter into and upon said property, and take possession thereof, subject however, to the legal possession of said Lawler and Wells; and the said Cowland may use, possess, explore, develop, work and operate the said property, and all the proceeds derived from such use, development, operation and working of the same and from the ores taken therefrom shall be at once paid to Lawler and Wells, and be applied to and credited upon the payment hereinabove stipulated to be made by said Cowland. It is further agreed that said Lawler and Wells shall retain and remain in possession of said property until the full payment of purchase price shall be made, and Cowland recognizes and agrees to such possession, and any and all use made of, by or on the part of the said Cowland shall be considered of said Lawler and Wells' possession as aforesaid. Lawler and Wells shall not work the said property, nor operate the said mine, nor interfere with the use, working and operation of said Cowland. It is further agreed that if the said Cowland shall fail to make any of the payments as above stated, and shall fail to take and pay for said property as above stated, that all improvements made on said property and all development made thereon and therein, and all ores taken therefrom shall be the property of the said Lawler and Wells, and shall not be removed by the said Cowland, and the costs and expenses
644 thereof shall in no manner be charged against said Lawler and Wells or against said property; that said Cowland shall have the right to work and operate the machinery and to use the property mentioned in said deed during the continuance of said contract and until the forfeiture thereof on his part; and in case of a forfeiture of contract on the part of said Cowland by failure to

comply with any of the provisions thereof, or to make any payment as herein provided, then he agrees to at once surrender and deliver possession of said property to said Lawler and Wells."

On the 12th day of May, 1892, and contemporaneously with the execution of said agreement, a deed to the said Charles Cowland was executed by John Lawler and Ed. W. Wells and wife particularly describing the said Hillside group of mines, and conveying the same to Cowland for the purchase price of $450,000. Contemporaneously with the signing of said agreement and deed, the said H. H. Warner signed an instrument in writing, guarantying that the said Charles Cowland will carry out and perform the conditions of said agreement above referred to. Afterwards and on the same day, the agreement, deed and instrument of guarantee were by the said Warner, John Lawler and Ed. W. Wells deposited with the Bank of Arizona at Prescott, as the escrow holder thereof, in accordance with the terms, conditions and provisions contained in the said escrow agreement.

645 4. That while the escrow agreement and deed were executed in the name of Charles Cowland, the said Cowland was the agent of H. H. Warner, and Warner was the real party in interest in the transaction.

5. That the said escrow agreement, deed and guaranty were never recorded but remained in the possession of the bank, as the escrow holder thereof, until November 10, 1893.

6. That at the time of the execution of said escrow agreement, "Exhibit A," and said deed, "Exhibit B," the defendants, John Lawler and Ed. W. Wells, knew that H. H. Warner contemplated the forming of a corporation to operate said group of mines and eventually vest the title thereof in said corporation, in compliance with the terms of said escrow agreement.

7. That on or about the 15th day of May, 1892, John Lawler delivered to T. A. Rickard, as the agent of Charles Cowland, the occupation of said group of mines under the terms and conditions contained in the license embodied in said escrow agreement, "Exhibit A;" that from May 15, 1892, to the 15th day of June, 1892, the funds necessary to carry on the operations of said mines under the administration of said Rickard, were furnished by the H. H. Warner Investment Company, a corporation, of which the said H. H. Warner was during that time the president, the amount of which said funds does not appear in the evidence.

8. That on the 14th day of June, 1892, said H. H. Warner,
646 Wm. M. Earl, Wm. R. Kennard, Francis B. Bowen and Charles Cowland incorporated, under the laws of the State of New Jersey, the Industrial and Mining Guaranty Company, with a capital of five hundred thousand dollars ($500,000), divided into five thousand (5,000) shares of the par value of one hundred dollars ($100) each, and on June 15, 1892, that corporation was organized with said incorporators as directors, with H. H. Warner as president; Wm. R. Kennard, vice-president; Wm. M. Earl, secretary, and Francis B. Bowen as treasurer; for the purpose of handling mines and industrial enterprises, buying and selling stock, etc., etc.

9. That on the 15th day of June, A. D. 1892, said Charles Cowland made and delivered to the Industrial and Mining Guaranty Company a written assignment of all his right, title and interest in and to the escrow agreement, "Exhibit A" aforesaid, a true copy of which said written assignment is attached to said answer and marked "Exhibit D;" that contemporaneously with the execution and delivery of said written assignment, "Exhibit D," the said Charles Cowland made and delivered to said Industrial and Mining Guaranty Company a deed of conveyance, a true copy of which said conveyance is attached to said answer and marked "Exhibit F;" that contemporaneously with the execution and delivery of said assignment, "Exhibit D," and said conveyance "Exhibit F," the said H. H. Warner made — delivered to said Industrial and Mining Guaranty Company a written consent to the making of said
647 assignment and deed, "Exhibits D and F," a true copy of which said written consent is attached to said answer and marked "Exhibit E;" that at the time the said Industrial and Mining Guaranty Company took and received said assignment, "Exhibit D," said written consent, "Exhibit E," and said conveyance, "Exhibit F," from the said Charles Cowland, to wit: on June 15, 1892, the said Industrial and Mining Guaranty Company had full knowledge and notice of the terms, conditions and provisions of the escrow agreement, "Exhibit A," aforesaid, and then and there by resolution of the board of directors of said Industrial and Mining Guaranty Company, the said Industrial and Mining Guaranty Company assumed all the covenants, conditions and agreements in the said escrow agreement, "Exhibit A," aforesaid, on the part of said Charles Cowland, to be kept and performed; and further, by said resolution, said Industrial and Mining Guaranty Company promised to carry out and perform said escrow agreement, "Exhibit A," and all the terms, conditions and covenants therein contained, on the part of said Cowland to be performed, and make the payments for said mines, mining properties and other goods and chattels provided for in said escrow agreement, "Exhibit A," and procure said deed for the same, then in the hands of the Bank of Arizona.

10. That on the 15th day of June, 1892, the said T. A. Rickard delivered to the Industrial and Mining Guaranty Company the occupation of said Hillside group of mines, and on that day the
648 said company entered into occupation of said group of mines with full knowledge and notice of the terms, conditions and provisions of the escrow agreement, "Exhibit A," aforesaid; that said company remained in occupation and operation of said Hillside group of mines from June 15, 1892, to and until the first day of October, 1892.

11. That on the 15th day of August, 1892, said H. H. Warner, William M. Earl, and one R. S. Hudspeth, as incorporators, incorporated the Seven Stars Gold Mining Company, under the laws of the State of New Jersey, with a capital of three million dollars ($3,000,000) divided into six hundred thousand (600,000) shares, of five dollars ($5) each, wherein, among other things, said corporation was authorized to hold, operate and convey mines; that afterwards,

and on the 24th day of September, 1892, the said Seven Stars Gold Mining Company was organized by the election of the following-named directors, to wit: Warner Miller, Hulbert H. Warner, J. Clifford Richardson, J. Herbert Jefferis, Arthur G. Yates, John W. Vrooman, B. E. Chase, Clinton B. Wiser, and Robert S. Hudspeth; with H. H. Warner as president, Robert S. Hudspeth as vice-president, and Harold J. Footner as secretary and treasurer.

12. That on the 10th day of September, 1892, the Industrial and Mining Guaranty Company, through its board of directors, by a resolution duly adopted, did offer to sell and convey all its
649 right, title and interest in the following mining properties, a portion of which is described in the escrow agreement and deed, Exhibits "A" and "B" aforesaid, to wit: the Seven Stars, Happy Jack, Contact No. 1 and Contact No. 2 mines; also, the claim known as Camp and the locations known as Mescal, Elwood, Midnight, Waterfall and Boulder, to a company formed or to be formed, and known as the Seven Stars Gold Mining Company, upon said company showing that it had placed two hundred thousand dollars ($200,000) for working capital in its treasury, and upon receiving two million eight hundred thousand dollars ($2,800,000) in cash or stock of the Seven Stars Gold Mining Company.

13. That on the first day of October, 1892, the Industrial and Mining Guaranty Company placed the Seven Stars Gold Mining Company in the occupation of said Hillside group of mines, and on that day the latter company entered into said occupation, with full knowledge and notice of the terms, conditions and provisions contained in the escrow agreement, "Exhibit A," aforesaid, and with full knowledge and notice of the resolution of the board of directors of the Industrial and Mining Guaranty Company referred to in finding 12 herein.

14. That the Industrial and Mining Guaranty Company, acting as the duly authorized agent of the Seven Stars Gold Mining Company, under date of September 24, 1892, issued a prospectus known as the "American prospectus" in aid of and to promote the sale of
650 the stock of the Seven Stars Gold Mining Company, a true copy of which said prospectus is attached to the original complaint herein and marked "Exhibit C;" that some 300,000 of said "American prospectuses" accompanied by a map and application for subscription to stock, copies of which are attached to the original complaint and likewise marked "Exhibit C" were circulated by mail throughout the United States, the circulation of which said prospectus and blanks commenced about the 20th of September, 1892.

15. That on October 3, 1892, the Industrial and Mining Guaranty Company, as the duly authorized agent of the Seven Stars Gold Mining Company, by a resolution of the board of directors of said Industrial and Mining Guaranty Company duly adopted, did authorize and direct an English prospectus to be issued, a true copy of which said prospectus is attached to the minutes of the Industrial and Mining Guaranty Company, under date of October 3, 1892, and contained in "Exhibit 73," attached to the deposition of John Griffin on file

herein; that the prospectus in this paragraph mentioned was never circulated in England or elsewhere.

16. That a prospectus was issued and circulated in England without the authority of the board of directors of the Industrial and Mining Guaranty Company or of the Seven Stars Gold Mining Company, a true copy of which said prospectus so circulated in England is attached to the original complaint herein and marked "Exhibit D;" this prospectus was prepared, supervised and circulated by
651 Charles Cowland; the descriptive matter in this prospectus was based upon data furnished him by the officers of the Industrial and Mining Guaranty Company; the circulation of this prospectus commenced about the 5th day of October, 1892, and amounted to about 80,000 copies; accompanying each copy of this prospectus was a map and application for subscription for stock, true copies of which are attached to the original complaint herein and marked "Exhibit C;" neither John Lawler nor Ed. W. Wells had any knowledge or information that this prospectus had been or was being circulated in England, or had any knowledge or notice of its contents until some time in the month of October, 1893.

The distributed English prospectus was the same as was attached to the complaint. This prospectus as it there appears was approved by the directors of the industrial company, with this exception: The third paragraph of the prospectus approved read: "The mines are situated in the Eureka mining district, Yavapai county, Ariz.," while said paragraph of the prospectus as finally printed and distributed in England read: "The mines *owned by the company are* situated in the Eureka mining district, Yavapai county."

17. That on May 15, 1892, at the Hillside mines, the defendants, Lawler and Wells, caused to be delivered to Mr. T. A. Rickard a report previously made upon said mines, known in the evidence as the "Blauvelt report," together with a map of the underground
652 workings of said mines as such workings then existed, known in the evidence as the "Blauvelt map;" also copies of the smelter and milling returns of ores which had been previously shipped from said mines and reduced, known in the evidence as "Smelters' returns;" that on September 28, 1892, at the request of H. H. Warner, said John Lawler sent by express to H. H. Warner, at New York city, the originals of said smelter and milling returns.

18. That on August 27, 1892, defendant Wells visited the office of the Industrial and Mining Guaranty Company, at 41 Broadway, New York city, and while there had an interview with H. H. Warner, president of that company and of the Seven Stars Gold Mining Company; that during that interview nothing was said to Mr. Wells about the plans of the Seven Stars Gold Mining Company nor of the Industrial and Mining Guaranty Company, nor the issuance and circulation of any prospectus.

19. That the section of the underground workings shown upon the map accompanying the prospectus and being one of the "Exhibits C" attached to the original complaint, is a copy of the Blauvelt map, with the additions of the outlines of the underground

workings made by T. A. Rickard, as the agent of Cowland, during his administration, and by the Industrial and Mining Guaranty Company during its operations of said property; that the original of the surface outlines of the mining claims and
653 . town site appearing upon said map, "Exhibit C," was prepared by Alexander O. Brodie while in the employ of the Industrial and Mining Guaranty Company, and without the knowledge of Lawler and Wells; that the original Brodie map contained the outlines of all the mining claims described in the escrow deed, "Exhibit B," together with other mining claims bonded by said Industrial and Mining Guaranty Company, and located by said Brodie for the benefit of the Seven Stars Gold Mining Company; that the said map, "Exhibit C," contains an outline of only those mining claims and town site mentioned in the resolution of the Industrial and Mining Guaranty Company, dated September 10, 1892, and referred to in finding 12 herein, together with the Boulder, a claim bonded from Joe Howell, and claims located by Mr. Brodie for the benefit of the Seven Stars Gold Mining Company; and, together with the Hillside patented claims mentioned in said escrow deed, "Exhibit B;" that defendant Lawler, on his visit to New York, August 30, 1892, saw the original Brodie map hanging on the wall of the office of said companies in New York; that the original Brodie map of which defendants' map, "Exhibit A" in evidence is a true copy, had endorsed thereon the words, to wit: "Plat of the Hillside and adjoining claims;" and said quoted words were written upon the original draft of the distributed map, "Exhibit C," attached to the complaint; that afterwards, without the knowledge of said Lawler, said quoted words were, before distribution, changed on said map, "Exhibit C,"
654 to the words, to wit: "Map of group of mines belonging to the Seven Stars Gold Mining Company."

20. That on and between the 30th day of August, 1892, and the 3rd day of September, 1892, the defendant, John Lawler, was in the offices of the Industrial and Mining Guaranty Company in New York city and there became aware that an American prospectus was being prepared for circulation for the purpose of promoting the sale of the stock of the Seven Stars Gold Mining Company, and, that the facts and statements contained in the Blauvelt report and map and copies of smelters' returns, hereinbefore mentioned, were being used as a basis of the description of the said Hillside group of mines to be contained in said proposed American prospectus.

21. That on October 28, 1892, H. H. Warner, in Prescott, represented to Lawler and Wells that he was unable to place securities that he held, in time to meet the payment of that portion of the purchase price falling due November 12, 1892; and, relying upon said representation and request of Warner, Lawler and Wells, on October 28, 1892, agreed to an extension of the time of payment under the agreement of May 12, 1892, and provided that the original agreement remain in full force, except as to said modification touching the time of payment.

22. That on May 8, 1893, H. H. Warner executed a general

assignment of his property for the benefit of his creditors to Job E. Hedges.

655 23. That on May 11, 1893, Lawler and Wells, knowing of the assignment of Warner, executed an agreement with Charles Cowland, stipulating that the payment mentioned in the original escrow agreement as falling due on May 12, 1893, might be made by said Cowland as follows: $9,098 in cash, and $4500 to be paid on the first day of June, 1893, and the like sum to be paid on the first day of each of the following months, viz: July, August, September, October and November, 1893.

24. That a part of the consideration for the execution of the written instrument "Exhibit K," attached to said answer was the issuance and delivery to said defendants Lawler and Wells of $50,000 par value of the guaranteed capital stock of the Seven Stars Gold Mining Company and of the appointment of John Lawler as manager of the operations of said Hillside group of mines.

25. That on May 11, 1893, the defendant, John Lawler, was appointed by the Seven Stars Gold Mining Company, manager of the operations of said Hillside group of mines, and said defendant, John Lawler, on May 13, 1893, entered upon his duties as such manager.

26. On May 20, 1893, Lawler received notice in writing that remittances on account of the Cowland contract were being made from money derived from the sale of the stock of the Seven Stars Gold Mining Company.

656 27. Before July 25, 1893, Lawler had personal knowledge that persons were being induced orally to purchase stock in the Seven Stars Gold Mining Company by representations as to the merits of the mining property in question.

28. The Seven Stars Gold Mining Company had no property other than its interest in said mines and no source of income other than the sale of its stock.

29. That on the 18th day of August, 1893, the chancery court, of the State of New Jersey, in a certain action for that purpose then pending in said court, duly appointed defendant, John Griffin, as receiver of said Industrial and Mining Guaranty Company and of the Seven Stars Gold Mining Company, and thereupon on that day the said John Griffin, duly qualified and entered upon his duties as such receiver.

30. That the Seven Stars Gold Mining Company from and including October 1, 1892, until and including the 17th day of August, 1893, continuously occupied and operated the said Hillside group of mines under and by virtue of the occupation thereof so given to it by the Industrial and Mining Guaranty Company as aforesaid, with full knowledge and notice of the terms, conditions, privileges and provisions contained in the original escrow agreement, "Exhibit A" aforesaid.

Remittances to the Bank of Arizona for Lawler and Wells after November 1st, 1892, were placed to the credit of the Seven Stars Gold Mining Company.

31. That on September 1, 1893, neither Charles Cowland
657 nor the said receiver nor the plaintiffs nor any one of them paid or offered to pay to Lawler and Wells the sum of $4500, payable on that date, according to the terms and conditions of the said escrow agreement and modifications thereof; nor has Cowland, nor has any one for him paid said sum since said date; nor has Cowland, nor has any one for him paid or caused to be paid, any portion of any purchase-money of said property, falling due or payable on or after the first day of September, 1893, according to the terms and conditions of said escrow agreement of May 12, 1892.

32. That on the 10th day of September, 1893, the defendants, John Lawler and Ed. W. Wells, as owners of the legal title to the said Hillside group of mines, and claiming to exercise their rights under the original escrow agreement, "Exhibit A" aforesaid, and the amendments, "Exhibits I and K" attached to said answer, entered into possession of said Hillside group of mines and from thenceforward to and until September 30, 1897, the day of the date of the appointment of the first receiver herein, continuously remained in the exclusive possession of said mines.

33. On the 10th day of November, 1893, the Bank of Arizona, as escrow holder of the escrow agreement and deed, dated May 12, 1892, at the request of Lawler and Wells, redelivered said deed, according to the terms of the said escrow agreement to the said Lawler and Wells.

658 34. That the defendants, John Lawler and Ed. W. Wells, had no knowledge or notice of the execution by Charles Cowland to the Industrial and Mining Guaranty Company, of the written assignment, "Exhibit D," the conveyance, "Exhibit F," the written consent thereto of H. H. Warner, "Exhibit E," and the resolution of the Industrial and Mining Guaranty Company accepting said instruments, as mentioned and described in finding 9 herein, until after the commencement of this suit.

35. That defendants, John Lawler and Ed. W. Wells, had no knowledge or notice of the adoption of the resolution of the Industrial and Mining Guaranty Company dated September 10, 1892, offering to sell a portion of the property in controversy with other property, to a company formed or to be formed and known as the Seven Stars Gold Mining Company and more particularly described in finding 12 herein, until after the commencement of this suit.

36. That on the 11th day of May, 1893, defendant John Lawler was, by the board of directors of the Seven Stars Gold Mining Company, appointed a director of said corporation to fill a vacancy then existing; that said Lawler never entered upon the duties of said office and had no knowledge or notice of said appointment until long after the commencement of this action.

37. That defendants John Lawler and Ed. W. Wells, in the month of October, 1892, became aware that the American pro-
659 spectus, "Exhibit D" to the original complaint, was being distributed by the Industrial and Mining Guaranty Company.

38. That the defendants, John Lawler and Ed. W. Wells, or either of them or any person in their or either of their behalf did not at

any time protest against the preparation or circulation of the prospectuses, maps and applications for subscriptions to stock herein mentioned, and they did not at any time or at all attempt in any way to give any notice of their rights in the Hillside group of mines to any of the plaintiffs or purchasers of the stock of the Seven Stars Gold Mining Company, except as such notice might be imputed to the said plaintiffs and stock purchasers through and by virtue of the recorded title in said defendants of the property in controversy, as in finding 1 herein set out.

39. That plaintiff, Clinton B. Wiser, was a director of the Seven Stars Gold Mining Company, and his name appeared on the prospectus as such director, and he assisted in the circulation of the American prospectus and in the sale of the stock of that corporation, and during all that time he had knowledge and notice that the title to the property in controversy was not vested in the Seven Stars Gold Mining Company.

40. That the Seven Stars Gold Mining Company duly authorized the Industrial and Mining Guaranty Company to act as its agent in the sale of stock, and all of the stock of the Seven Stars Gold Mining Company which was at any time sold under the
660 American prospectus was so sold by the Industrial and Mining Guaranty Company, and the latter received from the stock purchasers all the moneys which were paid on account of the purchase price of such stock.

41. That as to stock sold under the American prospectus to American stock purchasers, every contract of sale and purchase of stock of the Seven Stars Gold Mining Company was conducted by the Industrial and Mining Guaranty Company on the one part, as sellers, and by the individual subscriber to said stock as purchaser, on the other part; that as to stock sold under the English prospectus in England, every contract of sale and purchase of said stock was conducted by Tarbutt & Quentin on the one part as sellers, and by the individual subscriber to said stock as purchaser on the other part; and that neither John Lawler nor Ed. W. Wells was present at, nor a party to, any of said contracts.

42. That 21 out of a total aggregate numbering about 500 of the purchasers of stock of the Seven Stars Gold Mining Company have testified in this case; and, with the exception of witness Wiser, during all of the time of their and each of their (the said witnesses') dealings with the Industrial and Mining Guaranty Company in the purchase, subscription and payment for such stock:

(*a*.) They each relied upon the statements contained in the prospectus and maps as distributed, and they believed from
661 the reading of the same that the Seven Stars Gold Mining Company owned the mines and properties therein mentioned and referred to.

(*b*.) All of the said witnesses, including witness Wiser, and with the exception of witness M. J. Riordan, did not then know either of the defendants, John Lawler or Ed. W. Wells; and

(*c*.) That said witnesses, including witnesses Wiser and Riordan, did not before, or at the time of their said purchases, subscriptions

or payments, have any communication with said defendants, or either of them, concerning any matter in issue herein.

43. That the subscribers to the stock of the Seven Stars Gold Mining Company did not at the time of their individual subscriptions to, or at the time of their several payments for said stock, have any knowledge or notice of any of the following matters:

(*a.*) That Lawler and Wells on May 12, 1892, knew that H. H. Warner proposed to form a corporation to operate said group of mines and eventually take the title thereto, as in finding 6 herein set forth.

(*b.*) That said defendants had furnished the Blauvelt report and map, or the copies of and original smelters' returns as herein mentioned, or that the same were being, or had been, used as data for said prospectus, and the maps distributed therewith.

662 (*c.*) That John Lawler and Ed. W. Wells had visited the offices of the Industrial and Mining Guaranty Company, in New York, in August and September, 1892, or of any matter or thing occurring thereat; or,

(*d.*) That said defendants knew that said prospectuses and maps were being distributed.

44. That the subscribers to the capital stock of the Seven Stars Gold Mining Company, in making their several subscriptions therefor and payments thereon, did so without any knowledge of and without relying on anything said or done, or omitted to be said or done, in the premises by the said Lawler and Wells or either of them.

45. That John Lawler and Ed. W. Wells did not, before or at the time of any subscriptions to the capital stock of the Seven Stars Gold Mining Company or payment on account of said subscriptions, make any representations to or communicate with any subscriber of said stock concerning any matter or thing in issue herein.

46. That from the gross proceeds of the operations of the Hillside group of mines during its operation by the Industrial and Mining Guaranty Company, there was deposited in the Bank of Arizona to the credit of Lawler and Wells on account of the purchase price of said property, in accordance with the terms of said escrow agreement, "Exhibit A" aforesaid, the sum of $19,987.61; that during the operations of said properties by the Seven Stars

663 Gold Mining Company a like deposit was made for a like purpose, amounting to the sum of $47,812.25; aggregating in all $67,799.86.

47. That on May 12 and 24, 1892, H. H. Warner paid to the defendants, Lawler and Wells, on account of the purchase price of said property, the aggregate sum of $51,000; that there was paid on and between November 12, 1892, and August 4, 1893, to the defendants, John Lawler and Ed. W. Wells, on account of the purchase price of said property under the terms of the original escrow agreement, "Exhibit A" aforesaid, and the amendments, "I and K" aforesaid, the aggregate sum of $112,399.96; and said sum was

credited to Lawler and Wells on the books of the Bank of Arizona on the dates and in the amounts as follows, to wit:

| | |
|---|---|
| Nov. 12, 1892, Bank of Arizona | $35,000 |
| Nov. 12, 1892, Park nat. bank, New York | 23,500 |
| Dec. 9, 1892, Bank of Arizona | 7,000 |
| Dec. 9, 1892, Bank of Arizona | 12,500 |
| Dec. 9, 1892, Bank of Calif., San Francisco | 12,500 |
| Dec. 9, 1892, Bank of Calif., San Francisco | 4,500 |
| Feb. 11, 1893, Laidlaw & Co., New York | 4,500 |
| Feb. 11, 1893, Bank of Arizona | 1,639.96 |
| June 3, 1893, Laidlaw & Co., New York | 4,500 |
| June 5, 1893, Laidlaw & Co., New York | 2,200 |
| Aug. 4, 1893, Bank of Arizona | 4,500 |

48. That the payments of November 12 and December 9, 1892, and on February 11 and June 5, 1893, were made in the following manner, to wit: The treasurer of the Industrial and Mining Guaranty Company drew a check for each payment on its common fund in the Continental National Bank of New York, which said
664 checks were payable as follows, to wit: "To the order of Charles Cowland or Laidlaw & Company" (or, "to the order of Charles Cowland or the Park national bank," as the case was;) "for telegraphic transfer to the Bank of California" (or, "the Bank of Arizona" as the case was) "for credit to Lawler and Wells on account of the Cowland contract," which said checks were collected by the payee and the moneys received therefrom, transmitted in the usual course of business to the Bank of Arizona and there placed to the credit of Lawler and Wells on account of the purchase price of said property, in accordance with the terms of the original escrow agreement, "Exhibit A," and the amendments thereof.

49. That during the life of the Industrial and Mining Guaranty Company it was engaged in promoting sundry mining, railroad and industrial enterprises, including the business transactions of the Seven Stars Gold Mining Company; that during the time it received and disbursed the sum of $824,142.13; that from June 15, 1892, to and including August 1, 1893, the moneys which it received and disbursed on account of its various enterprises were all deposited in its name in a common fund in the Continental National Bank of New York, and checked against, disbursed and used by said Industrial and Mining Guaranty Company in its various business enterprises as required therein, excepting the sum of $111,724.23, of which sum $67,799.86 were the gross
665 proceeds of ore from the Hillside group of mines, and the further sum of $43,924.37, which was composed of $224.37, moneys received prior to May 11, 1893, from the sale of Seven Stars stock, and the remainder from loans obtained by said company, subsequent to May 11, 1893.

50. That the defendants, John Lawler and Ed. W. Wells did not at any time, prior to the time of the commencement of this action, have any knowledge or notice that any moneys received by them on account of the purchase price of the Hillside group of mines as

provided for in the original escrow agreement of May 12, 1892, came from or was the moneys or any part of the moneys which any one or more of the purchasers of the stock of the even Stars Gold Mining Company had paid in to the Industrial and Mining Guaranty Company on account of the purchase price of such stock.

51. That the defendants Lawler and Wells were not promoters of or in anywise interested in the organization of the Industrial and Mining Guaranty Company or of the Seven Stars Gold Mining Company, nor in the issuance or circulation of the prospectus, nor in the issuance and sale of the capital stock of either of said companies or in the proceeds thereof.

52. No certificates of stock of the Seven Stars Gold Mining Company were ever issued on account of the stock subscriptions made in England.

53. That after the 11th day of May, 1893, the Industrial and Mining Guaranty Company received the sum of $500 and no more,
666 on account of the sale of Seven Stars stock.

54. That the amount of moneys received by the Industrial and Mining Guaranty Company from the purchasers of guaranteed stock of the Seven Stars Gold Mining Company, was as follows: From the American subscribers, $131,859.52; from the English subscribers, $125,852.33; aggregating $253,128.05, of which $819.08 was returned by the Industrial and Mining Guaranty Company to certain of the stock subscribers to said guaranty stock, and their stock subscriptions cancelled, making the aggregate of money retained by the Industrial and Mining Guaranty Company from the sale of guaranteed stock, $252,308.97. There was received by the Industrial Mining and Guaranty Company, $2,583.80 from the sale by it of the common stock of the Seven Stars Gold Mining Company.

55. That on September 28, 1892, the Industrial and Mining Guaranty Company received its first moneys, amounting to $2,100, from the sale of the guaranteed stock, and during its operations of said Hillside group of mines prior to September 28, 1892, it had paid out on account of the operating expenses of said property the sum of $21,004.50.

56. The Seven Stars Gold Mining Company at its New York office did not keep any books of account of receipts and expenditures of moneys, but all accounts of the receipts and expenditures of money in the operations and expenditures of the Industrial
667 and Mining Guaranty Company and the Seven Stars Gold Mining Company during their respective operations of the Hillside group of mines, were kept by the Industrial and Mining Guaranty Company in its own books of account.

57. That the Industrial and Mining Guaranty Company, between the 15th day of June, 1892, and the 18th day of September, 1893, paid out for the operating expenses, purchase of machinery, purchase price of the Hillside group of mines, dividends and other expenses—all connected with this enterprise—the aggregate sum of $380,295.81, which amounted to $127,986.84 more than the amount of moneys received by it from the sale of Seven Stars guaranteed stock, and $60,186.98 more that the aggregate amount of moneys

received by it from the sale of Seven Stars guaranteed stock, and from the net proceeds of ore from the Hillside group of mines, paid into the Bank of Arizona on account of the purchase price of said mines.

58. That during the operations of the Hillside group of mines by the Seven Stars Gold Mining Company, there was expended by the Industrial and Mining Guaranty Company, for costs of operations, improvements, supplies and machinery, the sum of $112,411.32.

59. That the amount paid on account of machinery purchased and placed upon the Hillside group of mines by the Industrial and Mining Guaranty Company during the operations of the Seven Stars Gold Mining Company was the sum of $12,528.87, of which machinery to the value of $5,000 was sold under judicial sale
668 by creditors of the Seven Stars Gold Mining Company after June 1, 1893.

60. That on and between January 18, 1893, and May 10, 1893, the Industrial and Mining Guaranty Company paid out as and for dividends on stock sold of the Seven Stars Gold Mining Company, the sum of $11,533.07 to the then various holders of the capital stock of the Seven Stars Gold Mining Company.

61. That the stockholders, nor any one of them, did not, before the commencement of this suit return, or offer to return, to the Seven Stars Gold Mining Company his stock, or any part thereof; and said stockholders nor any one of them, did not, prior to the commencement of this action, return or offer to return, his or their portion of the dividends received by him or them from the Industrial and Mining Guaranty Company.

62. That there never was any meeting duly called and held of the stockholders of said Seven Stars Gold Mining Company; that on April 4, 1894, several stockholders representing themselves and about 300 other stockholders, voluntarily met at Jersey City, N. J., and there made demand upon John Griffin, receiver, as aforesaid, to commence this suit, and he refused so to do.

63. That on and between September 10, 1893, and September 30, 1897, John Lawler and Ed. W. Wells received from the operations of said Hillside group of mines the sum of $37,376.86, and disbursed in such operations during that time, the sum of
669 $35,658.93.

64. That between the 17th day of November, 1893, and the time of commencing this action, the plaintiffs, or said receiver, or any one for them, or either of them, did not make any demand upon said John Lawler and Ed. W. Wells, or either of them, for the possession of the properties in controversy herein, or any part thereof.

WEBSTER STREET, *C. J.*,
FLETCHER M. DOAN, *A. J.*,
GEO. R. DAVIS, *A. J.*,
*Supreme Court, Territory of Arizona.*

(Endorsed:) No. 651. In the supreme court of the Territory of Arizona. Wiser *et al. vs.* Lawler *et al.* Findings of fact. Filed M'ch 23, 1901. Thos. Grindell, clerk.

670 *Clerk's Certificate.*

UNITED STATES OF AMERICA, } ss:
*Territory of Arizona,* }

I, Thomas Grindell, clerk of the supreme court of the Territory of Arizona, do hereby certify that the foregoing pages, numbered from 1 to 669, inclusive, contain a full, true and correct copy of the original complaint and exhibits; answer and cross-complaint of Lawler and Wells, amended complaint; answer to amended complaint of Lawler and Wells, answer of John Griffin to amended complaint; answer of Wiser and Field to cross-complaint; order appointing receiver and master; order and stipulation for appointment of Judge Hicks as special master; stipulation of parties as to certain payments; report of special master; objections and exceptions of Lawler and Wells; final decree, findings of fact and conclusions of law; motion of Lawler and Wells for new trial; amendment of amended complaint; findings of fact; submission of findings of fact of plaintiffs; decree dismissing complaint; minutes of district court; motion for statement of facts; findings of fact and conclusions of law of district court; opinion of supreme court; judgment; motion for rehearing; precept; motions for findings of fact; all orders and proceedings in supreme court, affidavit as to amount in controversy; petition for appeal; order for appeal; appeal bond; and findings of fact; in the case of Clinton B.
671 Wiser, C. M. Field, John A. Kerr, James A. Ferguson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quinten, appellants, against John Lawler, Ed. W. Wells, Seven Stars Gold Mining Company, Industrial Mining & Guaranty Company and John Griffin, receiver, appellees, as the same remain of record and on file in this office.

Also that the citation attached hereto is the original citation issued by said supreme court of the Territory of Arizona.

In testimony whereof, I have caused the seal of the said supreme court of the Territory of Arizona to be hereunto affixed at the city of Phœnix, in the Territory of Arizona, this 13th day of September, A. D. 1901.

Seal Supreme Court of Arizona.

THOMAS GRINDELL,
*Clerk of the Supreme Court of the Territory of Arizona.*

672 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to John Lawler, Ed. W. Wells, Seven Stars Gold Mining Company, Industrial Mining & Guaranty Company, and John Griffen, receiver, defendants and appellees, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington beginning on the second Monday of October, in the year of our Lord one thousand nine hundred and one, pursuant to an appeal taken from the supreme court of the Territory of Arizona to the said Supreme Court of the United States wherein Clinton B. Wiser, C. M. Field, John A. Kerr, James A. Ferguson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. E. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders and Cecil Quinten are appellants and you are appellees, to show cause, if any there be, why the judgment and decree rendered in said cause should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 13th day of September, A. D. 1901, and of the Independence of the United States the one hundred — twenty-sixth.

FLETCHER M. DOAN,
*Associate Justice of the Supreme Court of the Territory of Arizona.*

Witness the seal of said court.

[Seal Supreme Court of Arizona.]

THOMAS GRINDELL,
*Clerk Supreme Court of Arizona.*

Service of copy accepted this — day of September, 1901.

——— ———.

673 [Endorsed:] No. 651. Clinton B. Wiser *et al. vs.* John Lawler *et al.* Citation. Service of within acknowledged this 16th day of Sept. 1901 for Lawler & Wells. E. M. Sanford, Herndon & Norris, att'ys. Service of within citation acknowledged Sept. 16, 1901 on behalf of Seven Stars Gold Mining Company, Industrial Mining & Guaranty Company, and John Griffin, receiver, by their attorneys, Campbell & Job. Filed September 17th 1901 Thomas Grindell, clerk.

Endorsed on cover: File No. 18,287. Arizona Territory supreme court. Term No. 434. Clinton B. Wiser, C. M. Field, John A. Kerr *et al.*, appellants, *vs.* John Lawler, Ed W. Wells, Seven Stars Gold Mining Company *et al.* Filed October 14th, 1901.

# BRIEF FOR APPELLANTS

20071

IN THE

# Supreme Court of the United States,

OCTOBER TERM, A. D. 1902.

**No. 174.**

CLINTON B. WISER, C. M. FIELD, JOHN A. KERR, JAMES A. FERGUSON, DORSEY NEVILLE, MARY M. HEATH, JOHN J. MILLER, HENRY L. MUGSFORD, WILLIAM J. FOSTER, EDGAR G. MILLER, L. F. HOIRNE, SIDNEY G. LAW, EDWARD M. SMITH, HARPER M. SMITH, BENJAMIN GOODMAN, LESTER M. CROUCH, JOHN B. CLUTE, KATIE T. COURTNEY, H. S. ANDERS, AND CECIL QUENTIN, *Appellants,*

*vs.*

JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD MINING COMPANY, INDUSTRIAL MINING & GUARANTY COMPANY, AND JOHN GRIFFIN, RECEIVER, *Appellees.*

Appeal from the Supreme Court of the Territory of Arizona.

## BRIEF FOR APPELLANTS.

MAY IT PLEASE THIS HONORABLE COURT:

### STATEMENT OF THE CASE.

#### I.

NATURE OF THE SUIT AND PROCEEDINGS IN THE DISTRICT COURT AND SUPREME COURT OF ARIZONA.

This is an appeal from a decree of the Supreme Court of Arizona affirming a decree of the District Court of

Yavapai County, Arizona, dismissing, for want of equity, a complaint filed by appellants. This complaint was filed by appellants, for themselves and for all others in like estate, against John Lawler and Ed. W. Wells, principal defendants, and Seven Stars Gold Mining Company, Industrial Mining & Guaranty Company, and John Griffin, receiver of the Seven Stars Gold Mining Company and Industrial Mining & Guaranty Company. Appellants had purchased stock in the Seven Stars Gold Mining Company, relying upon the statements appearing in a prospectus and map of that company, representing it to be the owner of a group of mines situate in Yavapai County, Arizona. John Lawler and Ed. W. Wells were the vendors of those mines, and had made a contract for their conveyance to Chas. Cowland or his assigns, in the form of an escrow agreement.

The relief demanded by the suit, as set forth in the amended prayer, appears at page 191 of the transcript. It is alternative in character and as follows:

First. That it be adjudged and decreed that Lawler and Wells, by their acts and silence shown in the bill of complaint, are estopped from insisting on the terms of a certain escrow agreement of May 12, 1892, and from asserting that the title of the mining property involved in the suit was not vested in the Seven Stars Gold Mining Company in which the plaintiffs had purchased their stock; or

Second. That plaintiffs and others in like estate be granted a money decree against Lawler and Wells for the aggregate amount of money paid by plaintiffs and others in like estate for stock in the Seven Stars Gold Mining Company upon the representations in the prospectus and map mentioned in the complaint, whereupon the title to

the mining property should be confirmed in Lawler and Wells.

The original complaint was filed March 9, 1895. After taking a number of depositions plaintiffs amended their complaint to conform to the proof. The complaint as amended appears in the transcript, pages 57 to 71, excepting the amended prayer, which appears at page 191.

To the complaint as amended Lawler and Wells filed special and general demurrers, general and special denials and a plea of estoppel in the nature of an answer. (Tr., 71-98.) Receiver Griffin filed a short answer, admitting all the averments. (Trans., 98.) Seven Stars Gold Mining Company and the Industrial Mining & Guaranty Company were adjudged in defaullt for want of answer. (Trans., 226.)

September 27, 1897, the cause came on for hearing upon the amended bill and the pleadings aforesaid before Honorable Hiram C. Truesdale, presiding judge. (Trans., 226.) After hearing the equities were adjudged in favor of the plaintiffs and an interlocutory decree for relief and accounting with Lawler and Wells was entered. (Trans., 229.) This interlocutory decree, in brief, adjudged (Trans., 230) that the rights of Lawler and Wells, the vendors of the mines, were subject to the rights and equities of each and every stockholder of the Seven Stars Gold Mining Company who had, in good faith, bought his stock induced by the representations made in the prospectus and map circulated to promote the sale of the stock. The cause was then referred to a master to ascertain and report to the court the number of shares of the Seven Stars Gold Mining Company subscribed and paid for and the names of the subscribers. (Trans., 230.) The order of reference likewise requested

the master to ascertain the amount of money paid to Lawler and Wells on account of the purchase price of the property under the contract in escrow.

Pending the hearing before the master, Judge Truesdale died. The cause was then assigned to Honorable Webster Street. Upon the special master concluding his report, objections were interposed by Lawler and Wells and were overruled. (Trans., 141.) These objections, treated as exceptions to the report, were considered and overruled by Judge Street. (Trans., 164.)

July 11, 1898, Judge Street entered a final decree "to carry into effect the adjudications and decree" of Judge Truesdale. This final decree adjudged that the stockholders of the Seven Stars Gold Mining Company, including appellants, and all others in like estate, "have a lien upon the said mines and mining property prior and superior to any right, title, interest or equity in or to said property, property rights or appurtenances of said defendants, John Lawler, Ed. W. Wells, Industrial Mining & Guaranty Company, Seven Stars Gold Mining Company and John Griffin, receiver of the Industrial Mining & Guaranty Company and of the Seven Stars Gold Mining Company, for the amount and in the sum of $180,139.82," and the property was ordered sold in satisfaction of this lien, the surplus, if any, to be paid to Lawler and Wells. (Trans., 165.)

His Honor Judge Truesdale heard the cause in the District Court. He was the only judge who saw the witnesses and heard them testify. Before him the cause was thoroughly argued. His conclusions of fact and law were fully stated at the time of the entry of the interlocutory decree and appear in the transcript, pages 148 to 163.

Upon the entry of the final decree, in accordance with the interlocutory decree of Judge Truesdale, Lawler and Wells filed a motion for a new trial. (Trans., 168.) Thereafter, and upon this motion, Judge Street set aside the decree which he had entered in accordance with the interlocutory decree of Judge Truesdale and granted a new trial. (Trans., 237.)

Thereupon and on November 1, 1898, the case was resubmitted to Judge Street upon the pleadings and upon the evidence that had been taken on the hearing before Judge Truesdale and upon the arguments made on the motion for new trial, and thereupon and on said November 1, 1898, Judge Street held that plaintiffs were entitled to no relief and ordered the dismissal of the complaint. (Trans., 238.) Motion for a new trial was made by plaintiffs and denied *pro forma*. (Trans., 238.) Thereupon an appeal was prayed and perfected to the Supreme Court of Arizona. (Trans., 239.) The Supreme Court affirmed the decree of dismissal. (Trans., 308.) Plaintiffs filed a petition for rehearing, which was denied. This petition appears in the transcript, pages 292 to 300. From this decree of affirmance the present appeal is prosecuted.

At the time of the entry of the interlocutory decree of September 21, 1897, by Judge Truesdale, he made and entered of record his findings of fact, which appear in the transcript, pages 148 to 156. At the time of granting the new trial and thereon dismissing the complaint, Judge Street signed and filed in the cause findings of fact, *which had been drafted and submitted by counsel for defendants.* (Trans., 192-207.) He rejected all findings made by his predecessor, who had heard the cause and all findings submitted by counsel for plaintiffs. (Trans., 207-221.)

At the time of the submission of the cause in the Supreme Court plaintiffs filed a motion for a statement of facts, together with a proposed statement of facts. (Trans., 243-259.) This statement not only states facts proved on the trial, but also refers to the evidence establishing each fact.

The Supreme Court accepted, approved and filed as its findings of fact the findings of fact made by Judge Street in the District Court (Trans., 314), adding, however, three additional findings, numbered 26, 27 and 28. (Trans., 321.)

The evidence does not appear in the transcript of the record, no error being assigned as to rulings on the admission or rejection of evidence. The transcript is in accordance with the Act of Congress of April 7, 1874, c. 80, entitled "An Act concerning the practice in territorial courts and appeals therefrom," 18 Stat., 27, which provides:

> "That the appellate jurisdiction of the Supreme Court of the United States over the judgments and decrees of said territorial courts in cases of trial by jury shall be exercised by writ of error, and in all other cases by appeal, according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have prescribed, or may hereafter prescribe; provided, that on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence, when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court, together with the transcript of the proceedings and judgment or decree," etc.

## II.

### THE FACTS OUT OF WHICH THE LITIGATION AROSE.

In ascertaining the facts of this case, we think it proper that this court consider:

(1) Admissions of appellees in the pleadings and motion for new trial filed by them in the District Court. (Trans., 168.)

(2) A stipulation made and filed by the parties of certain facts. (Trans., 106.)

(3) The report of Chas. P. Hicks, special master, which was filed in the cause and became a part of the record. (Trans., 107.)

(4) Fndings of fact made by the Supreme Court of Arizona. (Trans., 314.)

THE MATERIAL FACTS ARE:

On and prior to May 12, 1892, appellees, John Lawler and Ed W. Wells, both of Prescott, Yavapai County, Arizona, were the owners of the mines described in the bill of complaint known as the Hillsdale group of mines. Lawler owned an undivided three-fourths interest and Wells an undivided one-fourth interest therein. (Find. 1, Trans., 314.) Their title was of record in Yavapai County, Arizona, in which the mines were located. Before May 12, 1892, Lawler and Wells had been negotiating the sale of these mines to H. H. Warner of New York City. These negotiations resulted in a contract of purchase executed on May 12, 1892, between Lawler and Wells, as vendors and Chas. Cowland as vendee. (Find. 3, Trans., 314.)

Warner suggested the name of Cowland as the apparent purchaser, because he intended to promote the property and did not wish to appear in the contract of purchase. As a matter of fact Warner was the sole party in interest and guaranteed payment of the purchase price. (Finding 4, Trans., 316.) Contemporaneous with the execution of the contract of purchase was executed a warranty deed reciting full payment of the purchase price, conveying the mining property to Cowland (Trans., 315). The contract of purchase and deed were put in escrow in the Prescott National Bank at Prescott, Arizona. (Trans., 315.) This contract of purchase provided, among other things (Trans., 53):

(1) That the deed to the mining property from John Lawler and Ed W. Wells to Chas. Cowland, dated May 12, 1892, is deposited in escrow with the Bank of Arizona and be held and delivered by said bank upon the payment of $450,000, $20,000 at the date of the execution of the contract, $80,000 thirty days thereafter, $100,000, on or before November 12, 1892, $125,000 on or before May 12, 1893, and $125,000 on or before November 12, 1893, all bearing interest at ten per cent.

(2) That Cowland have the right to enter immediately into full possession and occupancy of the mining property and to work and operate the same.

(3) This possession of Cowland and his assigns by express terms of the agreement was to remain in law the possession of Lawler and Wells; that is to say, while Lawler and Wells gave exclusive and public possession to Cowland with apparent unrestricted ownership, yet as between Cowland and Lawler and Wells the possession of Cowland and his assigns should be treated in law as the possession of Lawler and Wells.

(4) All the proceeds of the operation of the property by Cowland and his assigns until the full purchase price was paid should belong to Lawler and Wells.

(5) In case of a failure to pay any installment of the purchase price, all payments theretofore made should be forfeited to Lawler and Wells and the property with all improvements and all ores taken therefrom should revert to Lawler and Wells.

(6) Lawler and Wells should in no way interfere with the use, working and operation of the property by Cowland and his assigns.

The contract was assignable by Cowland without the consent of Lawler and Wells.

Upon the execution of this contract and deed and the placing of the same in the Bank of Arizona in escrow Warner paid Lawler and Wells $20,000 in cash and on May 24, 1892, twelve days thereafter, Warner paid to Lawler and Wells $31,000.

About May 15, 1892, Lawler, representing himself and Wells, placed Warner in possession of the mining property (Finding 7, Trans., 316), and Warner and his assigns, as hereinafter more fully shown, remained in exclusive, open and public possession of this mining property until the enforcement of the forfeiture by Lawler and Wells on account of the non-payment of accrued installments of the purchase price on September 10, 1893. (Finding 32, Trans., 322.) During this entire period of open and public possession by Cowland and his assigns, the deed and escrow agreement remained in the possession of the Prescott National Bank, and were never recorded or made known to appellants or the public. (Find. 3, Trans., 315; Find. 42, Trans., 323.) While thus in possession of the prop-

erty under the Cowland contract and on June 14, 1892, Warner incorporated under the laws of New Jersey the Industrial Mining & Guaranty Company, an auxiliary corporation to aid in the promotion of these mines and other enterprises, as hereafter shown. (Fnding 8, Trans., 316.) On June 15th, Cowland assigned to this Industrial Mining & Guaranty Company the escrow agreement, and on that day the possession of the mines was transferred to the Industrial Mining &Guaranty Company. (Finding 9. Trans., 317,) That company operated the mines until October 1, 1892, when possession was transferred to the Seven Stars Gold Mining Company. (Finding 13, Trans., 318.)

This last named company was incorporated in New Jersey on August 15, 1892. (Find. 11, Trans., 317.) The purpose of this incorporation was to take the title to this mining property and to operate the mines and to offer its stock based on the mining property for value to public subscription. During all the time that the stock of the Seven Stars Gold Mining Company was being offered to the public for subscription as hereinafter shown, that company was in exclusive, open and public possession and operation of the mining properties in controversy. (Find. 30, Trans., 321.) It conducted the operations of the mines as apparent owner. It opened books, purchased supplies, employed labor, sold ore, collected the proceeds of the ore, and otherwise dealt with the public in the same manner as the actual owner of the property.

All this was with the full knowledge and acquiescence of Lawler and Wells.

While it was so in possession and operating this mining property and thus clothed with the appearance of

prosperous ownership, stock of the Seven Stars Gold Mining Company was offered and sold to various persons throughout the country, including appellants.

The scheme of promotion was as follows: The sale of the stock was made through the Industrial Mining & Guaranty Company as the agent of the Seven Stars Gold Mining Company. (Find. 40, Trans., 323.) Warner controlled both companies.

June 15, 1892, as stated above, Cowland assigned all his rights under the escrow contract to the Industrial Mining & Guaranty Company (Finding 9, Trans., 317), the Industrial Mining & Guaranty Company agreeing to carry out all covenants of the contract to be performed by Cowland.

On September 10, 1892 (Find. 12, Trans., 318), the Board of Directors of the Industrial Company adopted a resolution offering to convey to the Seven Stars Gold Mining Company all its interest in the mines in question, upon that company showing that it had placed $200,000 of working capital in its treasury, and upon the Industrial Mining & Guaranty Company receiving $2,800,000 in cash *or stock* of the Seven Stars Gold Mining Company. The stock of the Seven Stars Gold Mining Company was fixed at $3,000,000, divided into 600,000 shares of $5 each. (See ) prospectus, Trans., 18.) Two hundred thousand shares were made a guaranteed stock upon which dividends at the rate of fifteen per cent. were guaranteed for five years. Upon the passage of the resolution above mentioned, this 200,00 shares of guaranteed stock was generally offered for public subscription. It is clear that the real purpose of Warner, studiously concealed from the public as hereinafter shown, was to realize from the

sale of this guaranteed stock sufficient moneys to enable him to pay Lawler and Wells for the property and at the same time to meet the guaranty of dividends for five years. By selling 200,000 shares of stock at $5 a share Warner would realize $1,000,000. Out of this he could pay Lawler and Wells the $400,000 still due on the property and, with what could reasonably be expected from the operation of the mine, pay the fifteen per cent. dividends for five years, and still have $2,000,000 of stock as a profit. To this scheme all the acts herein shown were subsidiary, and in its success, so far as the raising of $400,000 to meet the purchase price was concerned, it is evident that Lawler and Wells were greatly interested. To carry out this scheme and effect the sale of the stock, the Industrial Mining & Guaranty Co., which, as we have seen, under the resolution of September 10, 1892, was to receive $2,800,000 of the stock of the Seven Stars Gold Mining Company, prepared two very elaborate prospectuses, one for America and the other for England. (Find. 14, 15, 16, Trans., 318.) These prospectuses were worded in the most attractive way to show the great merits and value of this group of mines of the Seven Stars Gold Mining Company, and to demonstrate the great desirability of an investment in the stock representing such properties. (Prospectuses, Trans., 18, 29.) Three hundred thousand copies of the American prospectus, accompanied by a map of the property and applications for subscription to stock, were circulated by mail throughout the United States. This circulation began on September 20, 1892, although the prospectus was dated September 24. (Finding 14, Trans., 318.) Among those who received copies of the prospectus, map and blank subscriptions were appellants. Upon the faith of their statements

they severally purchased various amounts of stock in the Seven Stars Gold Mining Company. All of appellants, excepting Wiser, testified, as found by the Supreme Court of Arizona (Find. 42, Trans., 323), that they had received the prospectus and map and *believed from reading the same that the Seven Stars Gold Mining Company owned the mines and property therein mentioned, and by such belief were induced to buy the stock in the company.* None of appellants had any knowledge whatsoever of the escrow agreement or warranty deed in the possession of the Bank of Arizona, or of Charles Cowland in the assignment made by him to the Industrial Company. The public had no information other than that conveyed by the prospectus. Circulated with the prospectus were blank forms for application for shares (Trans., 28), which expressly recited that subscriptions are made "upon the terms and conditions of the prospectus." Upon these blanks appellants applied for their stock. Stock was sold throughout the country to about 500 persons. (Finding 42, Trans., 323.) Appellants Anders and Quentin reside at London and purchased stock on the faith of the English prospectus.

Upon the American prospectus stock was sold and the proceeds of such sale received by the Industrial Mining & Guaranty Company in the amount of $131,859.52. Upon the English prospectus stock was sold and paid for in the sum of $125,852.33. $2533,128.05 was the aggregate amount of money received from the sale of the stock of the Seven Stars Gold Mining Company through this scheme of public subscription, and the entire amount received for stock of that company so far as this record shows.

## The Prospectuses.

Both the American and English prospectuses and maps as thus distributed were manifestly false in various material and important particulars. They abound not only with statements calculated to mislead but with literal untruths. Nowhere in either prospectus is there any mention or intimation of any interest or title of Lawler and Wells in or to the mines in the possession of the Seven Stars Gold Mining Company, nor any mention of the escrow agreement, or any condition attached to the title. The prospectuses or maps do not mention that any person whatsoever other than that company had any interest in the mines. On the contrary, as each prospectus is examined, it will be seen that its perusal could lead to but one conclusion and that is that the Seven Stars Gold Mining Company was the owner of the mining property, upon the value of which the stock offered for public subscription was based. The prospectus and maps were prepared to sell the stock and to do so they represented to the proposed investor that the company owned the property which the prospectuses were offering to the public for investment. At the same time, it will be borne in mind that while these prospectuses were being circulated during the months of October, November and December, 1892, the Seven Stars Gold Mining Company was in full possession and operation of the mining property. This fact of open, public and exclusive possession is shown by the prospectus.

The American prospectus (Trans., 18) is ushered in by the statement that guaranteed quarterly dividends, etc., "are the novel features offered *investors in an already producing gold mine in Arizona,* one of the great-

est properties in this country." Thus the attention of the would-be buyer of stock was attracted at the outset to the great property in which, by purchasing stock, he could secure an interest. He was invited to invest in property which is made the basis of this prospectus and upon which the stock solely and exclusively rested for value. Then follows the statement that the purchasers of stock *would participate in the full earnings of the company*. Yet under the contract of escrow between Lawler and Wells and Cowland in the Bank of Arizona, Lawler and Wells pending such contract were to receive the entire gross earnings. (Trans., 55.) This is followed with the assertion: "This company presents an unusual opportunity for investors to acquire *an interest in one of the richest and most extensive gold mines in the world.*" And then it is stated that because of the extraordinary value of the property H. H. Warner had connected himself with the enterprise. The prospectus then goes on to describe the property, its magnitude, the amount of ore in sight, the possibility of further discovery, the five stamp mill on the property. "The output of the mine is at present about $1,000 a day. With 20 additional stamps now in course of construction, the output should reach $5,000 per day." It is not stated that any one excepting the company had an interest in this output. *Throughout the property is described as the property of the Seven Stars Gold Mining Company.*

Further reference to the property follows: "It is estimated that an expenditure of $100,000 will disclose additional ore to the value of $3,000,000." "Upon the completion of the new mill—to say nothing of the additional mills which it is proposed to erect—the property should earn very large dividends for many years."

The public is next told how the mine is being worked by the company, the nature of the vein, environment, etc. Reference is then made to the map which accompanies the prospectus. It is said that the mining property covers 210 acres and connected with it are dam sites, water sites, timber claims and town sites." Very prominently stated is the most material and important fact in this connection. Under the clause marked "Title"—the clause to which the purchaser would naturally look if the idea of questioning the ownership in the company that was offering the property ever entered his mind—it is said: "The titles are unquestionable, the Seven Stars, Hillside, Happy Jack and other mines *being held* under United States patent." Elsewhere the prospectus informed the purchaser that the mines were *then held* by the Seven Stars Company. Taking this statement in connection with the rest of the prospectus, it is a plain, unqualified representation that the mines were owned by the Seven Stars Gold Mining Company. This representation is confirmed by other clauses, which refer to the assay office, etc., etc., belonging to the company, with a further statement that *"the company owns* valuable timber claims covering 180 acres."

Under the clause marked "Objects," wherein was stated the purpose of the organization of the company, it is said that it was formed to acquire the property on October 1, 1892. Under the Cowland contract the deed was to remain in escrow until November 12, 1893, and until that time the *gross* earnings were to belong to Lawler and Wells. The prospectuses were circulated and practically all the stock sold *after* October 1st, when it was stated that the company, under its plan of formation, would acquire the property. The books for subscription

were not opened until October 6, 1892. (Trans., 19.) The prospectus refers to the map. The map pictures the mines and contains the inscription (Trans., 24): "Map of the Group of Mines *belonging to the Seven Stars Gold Mining Company.*"

After asserting in the prospectus and on the map in several forms ownership of the mines by the Seven Stars Gold Mining Company, the public is advised by other express statements in the prospectus, that the funds to be raised by public subscription for stock were to be used as working capital and to develop and extend the operations at the mines. Thus it was made clear from the prospectus that no part of these funds would be needed to pay for the mines which already belonged to the company.

The prospectus asserts: "It is estimated that an expenditure of $100,000 will disclose additional ore to the value of $3,000,000." It is further stated that a twenty stamp mill is in course of construction, "to say nothing of the additional mills which it is proposed to erect." (Trans., 20.) The prospectus speaking of recent developments, that "another tunnel can be run 75 feet below the present lowest level," etc., "no limit is yet known to the extent of this great mass of ore," and a report attached to this prospectus states that "the property was in the infancy of its development." (Trans., 23.)

Not a word is said as to unpaid purchase price.

A reading of the entire prospectus leads to but one conclusion, namely: Two hundred thousand shares of stock were being sold to raise funds, not to pay for the property, but to further equip and develop it. It was already the property of the company without adverse claim or condition, is the meaning of the prospectus.

If, in the face of the representations of the ownership, the matter of how the property had been paid for occurred to any stockholder, the prospectus told him that the entire capital of the Seven Stars Gold Mining Company was $3,000,000, and but $1,000,000 was offered for sale. The natural inference would be that the other $2,000,000 or some portion thereof had acquired and paid for this great property.

These were representations held out to the public, to the full knowledge of Lawler and Wells as hereinafter shown. Secretly, and as known to Lawler and Wells and Warner and no other persons, Warner and his company had in fact no title whatsoever to the mines and could acquire such title only by getting the public to pay the price by buying his stock, which at the time offered to the public was dependent for all value upon hopes that $400,000 of it would be sold.

The English prospectus contains practically the same representations as to the property, its possession and ownership, as the American prospectus, with the additional unqualified assertion. (Trans., 30.) "The mines *owned by the company* are situated in the Eureka Mining District, Yavapai County, Arizona, 50 miles from Prescott, on the Arizona Central Railway. * * * (Trans., 31.) *The title is indefeasible,* being United States patent, to five claims, together with several locations as easements."

The English prospectus likewise wholly omits mention of the escrow agreement or of any adverse interest or condition attached to title.

The same map was circulated with both American and English prospectuses.

It is found as a fact that a great number of persons

were deceived and drawn into the purchase of shares by the facts misstated and concealed. (Find. 42, Trans., 323.)

These prospectuses and maps were prepared with the aid of Lawler and Wells. Lawler and Wells furnished substantially all the data used in the preparation of the prospectus. This data included copy of what was known as the Blauvelt report; also the Blauvelt map, which was the map afterwards circulated with the prospectus, copies of smelter and milling returns of ores as well as original smelter and milling returns. (Finding 71, Trans., 319; Finding 43b, Trans., 324.)

It is admitted in the motion for new trial by appellees (Trans., 185, subhead E) that the ore and smelter returns which appear in the prospectuses were delivered by Lawler and Wells to Warner. In said motion for new trial at Trans., 187, the same admission is made in effect as follows: "That there was no evidence tending to show that any proposed stock purchaser or stockholder at the time he purchased stock of the Seven Stars Company, knew that the Blauvelt maps or smelter's reports had been delivered by Lawler and Wells to Richard or the guaranty company, or of Lawler's visit to New York in September, 1892, and the transactions there occurring." John Lawler, one of appellees, was in New York between August 30, 1892, and September 3, 1892, while the prospectuses were being prepared and in the very office in which the work was being done.

He "there became aware that the American prospectus was being prepared for circulation for the purpose of promoting the sale of the stock of the Seven Stars Gold Mining Company, and that the facts and state-

ments contained in the Blauvelt report and map and copies of smelter's returns hereinbefore mentioned, were being used as a basis of the description of the Hillside group of mines to be contained in said proposed American prospectus." (Finding 20, Trans., 320.) Ed W. Wells, the other appellee, was likewise in New York during the time this prospectus was being prepared. (Finding 18, Trans., 319.)

After Lawler returned from New York and on September 28, 1892, at the request of Warner, he sent to Warner, by express, the originals of the smelter and milling returns, copies of which are attached to the prospectuses. (Finding 17, Trans., 319.)

The knowledge of Lawler and Wells of the circulation of the prospectuses and maps is established by the express findings of the Supreme Court of Arizona. (Finding 37, Trans., 322; Finding 43, Trans., 324.) In addition to these findings of the Supreme Court of Arizona it is admitted of record by appellees that Lawler and Wells received copies of the prospectus. Judge Truesdale, who heard the cause, expressly found that Lawler and Wells had received copies of the prospectus (Trans., 152), and Lawler and Wells in their motion for new trial, which was filed after this finding made by Judge Truesdale, admit the finding, but say it was immaterial. They say (Trans., 184): "Because the evidence shows that no one or more of the stockholders *knew anything about the* delivery of the Blauvelt maps, ore and smelter returns, or the visit of Lawler to New York, and the transactions there occurring, or the extensions of said Cowland contract, *or of the receipt by Lawler and Wells or the Bank of Arizona of any prospectus, or their knowledge of the distribution of said*

*prospectus.*" The Bank of Arizona, at Prescott, where Lawler and Wells resided, was their agent under the Cowland contract. It was to receive the payments for Lawler and Wells, credit payment, receive the proceeds of ore and upon full compliance with the contract, deliver the deed.

Judge Truesdale expressly found that a large number of these prospectuses were sent to the Bank of Arizona at Prescott, some of which were sent voluntarily by parties in New York, while others were sent afterwards upon the written request of one Hazeltine, who acted under instructions from the cashier of said bank. (Trans., 163.) This finding of Judge Truesdale is made an admitted fact of record by the statement of appellees in their motion for new trial. (Trans., 182L.)

The Supreme Court expressly finds (Finding 27, Trans., 321) that before July 25, 1893, Lawler had personal knowledge that persons *were being* induced orally to purchase stock in the Seven Stars Gold Mining Company by representations as to the merits of the mining property in question. The Supreme Court does not fix the date when Lawler acquired this knowledge, but it must have been acquired while the sale of the stock was being advertised and promoted as above shown.

Numerous other facts expressly admitted of record by appellees and found by the Supreme Court of Arizona establish beyond controversy that both Lawler and Wells on October 1, 1892, knew of the purpose of Warner to incorporate the Seven Stars Gold Mining Company, and on the basis of their mines offer its stock for sale to the public and by so doing realize the moneys with which to meet the payments accruing under the Cowland contract, and likewise their full knowledge of the distribu-

tion of the prospectuses and maps throughout the United States and England. It is expressly found that both Lawler and Wells knew at the time of the negotiation for the purchase of the property, in May, 1892, that it was the purpose of Warner to incorporate a company to take the title and operate the mines. (Finding 6, Trans., 316.)

The established facts as to knowledge of Lawler and Wells, and their contributions to the prospectus are confirmed by these further findings (Trans., 324, Finding 43):

"That the subscribers to the stock of the Seven Stars Gold Mining Company did not at the time of their individual subscriptions to, or at the time of their several payments for said stock, *have any knowledge or notice of any of the following matters:*

(a) That *Lawler and Wells* on May 12, 1892, *knew* that H. H. Warner proposed to form a corporation to operate said group of mines and eventually take the title thereto, as in finding 6 herein set forth.

(b) That said defendants had furnished the Blauvelt report and map, or the copies of and original smelter's returns as herein mentioned, or that the same were being, or had been, used as data for said prospectus, and the maps distributed therewith.

(c) That John Lawler and Ed W. Wells had visited the offices of the Industrial and Mining Guaranty Company, in New York, in August and September, 1892, or of any matter or thing occurring thereat; or,

(d) That *said defendants knew that said prospectuses and maps were being distributed.*"

Lawler and Wells knew of the incorporation of the

Seven Stars Gold Mining Company with a capital of $3,000,000, and that the name of the company was taken from one of the mines which they had sold, that is, Seven Stars, and that the company was incorporated to float their mining property; they knew of the circulation of the prospectuses broadcast throughout the United States and England and that such circulation was for the purpose of selling stock based entirely for its value upon their property; they knew that while in these prospectuses no mention was made of the escrow agreement or of any interest in the property held by themselves, or of any unpaid purchase price, that in fact it was through the sale of stock that Warner was endeavoring to raise the money with which to pay them for the property; they knew that on October 1st the Seven Stars Gold Mining Company entered into possession of the mines and openly and as apparent owner continued such operation during the months that the prospectus was circulated; they knew that the prospectus stated to proposed purchasers of stock that the proceeds of the sale of stock were to be used in the development of the mines, the building of additional stamp mill and the purchase of machinery and extension of the operation of the company; they knew that while the prospectus expressly stated that the purchasers of stock were to participate in the full earnings of the company, yet under the Cowland contract they were to receive for a long period the entire gross earnings.

Lawler and Wells never objected to or protested against the circulation of the prospectuses and maps, or any acts of Warner or the Industrial Mining & Guaranty Company. They never attempted in any way to make known their rights or interest in or to the prop-

erty. The Supreme Court of Arizona expressly finds (Finding 38, Trans., 322):

> "That the defendants, John Lawler and Ed W. Wells, or either of them or any person in their or either of their behalf, did not at any time protest against the presentation or circulation of the prospectuses, maps, and applications for subscriptions to stock herein mentioned, and they did not at any time or at all attempt in any way to give any notice of their rights in the Hillside group of mines to any of the plaintiffs or purchasers of the stock of the Seven Stars Gold Mining Company, except as such notice might be imputed to the said plaintiffs and stockholders through and by virtue of the recorded title in said defendants of the property in controversy, as in finding 1 herein set out."

Thus for nearly a year, while the Seven Stars Gold Mining Company was in possession of the mines and claiming their ownership, and innocent persons were throughout the country parting with their money upon the appearance and faith of such ownership, Lawler and Wells never asserted any rights inconsistent with the representations to the public. The record shows that the entire course of action of Lawler and Wells, up to the time they demanded $50,000 of the stock of the Seven Stars Gold Mining Company and Lawler became the superintendent and as such went into possession of the mines in the name and on behalf of the Seven Stars Gold Mining Company, as hereinafter shown, was in acquiescence and aid of the schemes and acts of Warner. The reason for this course of action plainly appears to have been the fact that by the success of his promotion Warner could meet his payments to Lawler and Wells.

On November 12, 1892, under the Cowland contract, the second payment of $100,000 to Lawler and Wells,

fell due. This date was close upon the circulation of the prospectus. October 28th Warner secured from Lawler and Wells an extension of time within which to make this payment. Lawler and Wells granted this extension with full and complete knowledge of the preparation and distribution of the prospectuses and maps representing ownership of their property as above shown, and by this extension of time enabled Warner to continue his deception of the public. (Finding 21, Trans., 320.)

This extension was personally arranged by H. H. Warner in Prescott after negotiation with Lawler and Wells, Warner claiming that he was unable to pay the accruing installment because he had been unable to place his securities. While in its findings the Supreme Court uses the language "unable to place securities that he held," without mentioning the securities, yet there could be no doubt that it was the stock of the Seven Stars Gold Mining Company that he had been unable to sell in the time expected. It does not appear that he had or was attempting to sell any other. After securing the extension of time Warner continued his public sale of stock.

Between November 12, 1892, and August 4, 1893, the Industrial Mining & Guaranty Company paid to Lawler and Wells $112,399.96. These amounts were paid at various times as sufficient funds were derived from the sale of stock. The payments were as follows (Finding 47, Trans., 325):

| | |
|---|---|
| Nov. 12, 1892, Bank of Arizona | $35,000 |
| Nov. 12, 1892, Park Nat. Bank, New York | 23,500 |
| Dec. 9, 1892, Bank of Arizona | 7,000 |
| Dec. 9, 1892, Bank of Arizona | 12,500 |
| Dec. 9, 1892, Bank of Calif., San Francisco | 12,500 |

| | | |
|---|---|---|
| Dec. 9, 1892, | Bank of Calif., San Francisco.. | 4,500 |
| Feb. 11, 1893, | Laidlaw & Co., New York..... | 4,500 |
| Feb. 11, 1893, | Bank of Arizona..... | 4,500 |
| June 3, 1893, | Laidlaw & Co., New York..... | 4,500 |
| June 5, 1893, | Laidlaw & Co., New York..... | 2,200 |
| Aug. 4, 1893, | Bank of Arizona..... | 4,500 |

The Supreme Court finds (Finding 40, Trans., 323):

> "That the Seven Stars Gold Mining Company duly authorized the Industrial and Mining Guaranty Company to act as its agent in the sale of stock, and all of the stock of the Seven Stars Gold Mining Company which was at any time sold under the American prospectus was so sold by the Industrial and Mining Guaranty Company, and the latter received from the stock purchasers all the moneys which were paid on account of the purchase price of such stock."

It is true that the identical moneys derived from the sale of stock were not transmitted to Lawler and Wells. The industrial Mining & Guaranty Company was promoting other enterprises at the same time as this Seven Stars Company; but as the fiscal agent and financial company it sold the stock, received the proceeds and deposited such proceeds in its general bank account and out of this general bank account made the payments above mentioned. The Supreme Court expressly finds that the "Seven Stars Gold Mining Company had no property other than its interest in said mines and no source of income other than the sale of its stock. (Finding 28, Trans., 321.) Likewise the Supreme Court expressly finds that the payments above mentioned were made from money derived from the sale of stock of the Seven Stars Gold Mining Company.

Finding 26, Trans., 321, is as follows:

> "On May 20, 1893, Lawler received notice in writing that remittances on account of the Cowland contract were being made from money derived from the sale of the stock of the Seven Stars Gold Mining Company."

Eleven thousand two hundred dollars was paid to Lawler and Wells after May 20, 1893. (Find. 47; Trans., 325.)

The sale of stock was the sole means adopted to raise money for the Seven Stars Gold Mining Company. (Finding 28, Trans., 321.) When sales of stock ended payments to Lawler and Wells ceased.

The entire amount paid to Lawler and Wells by the Industrial Mining & Guaranty Company was paid within a few days over two months after the time books of subscription to the stock were opened. Books were opened October 6th. (Trans., 19.) Subscriptions were payable $1 per share on application, $1 per share on allotment, and $3 per share thirty days after allotment. (Trans., 18.) Between November 12, 1892, and December 9, 1892, the Industrial Company paid to Lawler and Wells $90,500. (Trans., 325.) Likewise during the same period the largest payments were made them from the operation of the property. (Trans., 106.)

While the Supreme Court of Arizona expressly finds, as above shown, that Lawler received notice in writing on May 20, 1893, that remittances on account of the Cowland contract were being made from money derived from the sale of the stock of the Seven Stars Gold Mining Company, yet the Supreme Court elsewhere in its finding say, that they had no such knowledge, prior to the commencement of this action. (Finding 50, Trans.,

325.) It is clear that the express finding of written notice of the fact must control. Moreover, it appears that this finding of express notice in writing was one which the Supreme Court itself added to the findings of the District Court. (Trans., 199.)

In addition to the $112,399.96 paid to Lawler and Wells by the Industrial Mining & Guaranty Company out of the proceeds of the sale of the stock, there was paid to Lawler and Wells, by the Industrial Mining & Guaranty Company, while it was in operation of the mines, $19,987.61, and by the Seven Stars Gold Mining Company out of the proceeds of the operation, $47,812.25, aggregating in all $67,799.86. The payments to Lawler and Wells may be summarized as follows:

Between May 12 and 24, 1892, from H. H. Warner . . . . . $ 51,000

Between June 15 and September 18, 1893, from proceeds of operation of the mine. . $ 67,799.86

Between November 12, 1892, and August 14, 1893, from sale of stock . . . . . $112,399.96

The Industrial Mining & Guaranty Company between June 15, 1892, and September 18, 1893, put into the property for operating expenses, purchase of machinery, supplies and improvements the sum of $112,411.32. (Finding 58, Trans., 327.)

While the Seven Stars Gold Mining Company was in operation of the property and from such operation paid Lawler and Wells $47,812.25 (Trans., 43) the Industrial Mining & Guaranty Company was paying the entire expense of the operation of the property. (Abst., 54.) Under the Cowland contract Lawler and Wells were to receive "all the proceeds derived" from the operation of the property. (Trans., 33.)

After November 1, 1892, all remittances to Lawler and Wells were placed to the credit of the Seven Stars Gold Mining Company. (Finding 30, Trans., 321.)

On May 8th, Warner made a general assignment for the benefit of his creditors. (Trans., 320.)

May 11, 1893, Warner obtained another extension of time from Lawler and Wells. It was then agreed in writing (Trans., 56) that the payment falling due on May 12, 1893, might be made $9,098 in cash and $4,500 on June 1, 1893, and a like sum to be paid on the first day of the following July, August, September, October and November, 1893. (Finding 23, Trans., 321.) That as a part of the conisderation for the granting of this further extension Warner delivered to Lawler and Wells $50,000 par value of the guaranteed capital stock of the Seven Stars Gold Mining Company and *caused the appointment of Lawler as manager of the mines for the Seven Stars Gold Mining Company.* (Finding 24 and 25, Trans., 321.) As manager, in behalf of the Seven Stars Gold Mining Company, Lawler took possession of the property on May 13, 1893. He remained in possession as such manager until September 10, 1893. While Lawler was thus managing the property for the Seven Stars Gold Mining Company, he paid in its name to himself and Wells under the Cowland contract $2,355.37. (See stipulation of certain facts, Trans., 106.)

Under the agreement of extension of May 11, 1893, $4,500 was to be paid to Lawler and Wells on September 1, 1893. Warner had deceived the public to the limit and could sell no more stock. He made default in this payment and thereupon and on September 10, 1893, Lawler and Wells retook possession of the mines and

took down the escrow contract and deed. (Find. 31, 32, 33, Trans., 322.) Since then they have insisted that they are entitled to keep the mines and retain the moneys paid them as herein shown.

The first payments which came from the subscribers was paid to Lawler and Wells through the Bank of Arizona November 12, 1892, so that the first payment which came from the subscribers was made to Lawler and Wells some twelve days after the first extension. (Trans., 325.) The three last sums which are included in the amount of $112,339.96 received by Lawler and Wells from the money of subscribers were paid as follows: June 5, 1893, Laidlaw & Co., N. Y., $4,500; June 5, 1893, Laidlaw & Co., N. Y., $2,200; August 4, 1893, Bank of Arizona, $4,500. The two sums paid through Laidlaw & Co. were remitted through the Bank of Arizona, and all three of these items, aggregating $11,200, were so paid to and received by Lawler and Wells through the Bank of Arizona while Lawler was acting as manager of the Seven Stars Company.

It is clear, therefore, that if Lawler and Wells had declared the secret escrow agreement forfeited, instead of agreeing to an extension on October 31, 1892, the fraud and imposition upon plaintiffs and other subscribers would have been defeated.

No fact has been found showing or tending to show, and it has not been claimed that Warner made any effort to conceal from Lawler and Wells any of his plans or his acts in the promotion of the property, as herein shown.

On May 11, 1893, Lawler was elected a director of the Seven Stars Gold Mining Company, but received no notice of such election. (Find. 36, Trans., 322.)

The Industrial Mining & Guaranty Company paid out as a dividend on the stock of the Seven Stars Gold Mining Company to various stockholders $11,533.07. (Finding 60, Trans., 327.) At the time of receiving this dividend none of the stockholders had notice of the escrow agreement or of any interest or claim of Lawler and Wells.

On April 4, 1894, several persons who purchased stock met at Jersey City, New Jersey, and as a result of that meeting this suit was begun. (Find. 62, Trans., 327.)

The names of the subscribers to the stock, the amounts of their subscriptions and the cash paid appear in the transcript, page 108 to 140.

It will be noted that the Supreme Court of Arizona found that one of the appellants, Clinton B. Wiser, was a director of the Seven Stars Gold Mining Company and assisted in circulating the prospectus, and that he knew that the title to the property in controversy was not vested in the Seven Stars Gold Mining Company. (Trans., 39; Trans., 323. He is the only party who joined in this suit or who purchased stock that the Supreme Court finds had such knowledge. As to the effect of this finding on the rights of the other appellants and other stockholders, see Brief, *infra*.

August 18, 1893, a receiver was appointed for the Industrial and Mining Guaranty Company, and Seven Stars Gold Mining Company in New Jersey. (Finding 29, Trans., 321.) Demand upon the receiver to sue, and his refusal was proved. (Finding 62, Trans., 327.)

The foregoing, we believe, are the material facts.

We ask the court to examine the amended bill as the same appears in the transcript (Trans., 57), which will save its repetition here. Upon such examination of the

amended bill it will plainly appear that all its material averments are fully supported by the admissions of record and findings of the Supreme Court of Arizona.

In connection with the opinion of the Supreme Court of Arizona (Trans., 274) we respectfully request that this Honorable Court consider the consideration of that opinion in the petition for rehearing. (Trans., 292.)

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1902.

Clinton B. Wiser, C. M. Field, John A. Kerr, James A. Ferguson, Dorsey Neville, Mary M. Heater, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hoirne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders and Cecil Quentin,

*Appellants,*

*vs.*

John Lawler, Ed. W. Wells, Seven Stars Gold Mining Company, Industrial Mining & Guaranty Company, and John Griffin, Receiver,

*Appellees.*

*Appeal from the Supreme Court of the Territory of Arizona. No. 174.*

ASSIGNMENT AND SPECIFICATION OF ERRORS.

Come now the appellants, Clinton B. Wiser, C. M. Field, John A. Kerr, James A. Ferguson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William J. Foster, Edgar G. Miller, L. F. Hoirne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders and Cecil Quentin, by G. W. Kretzinger and M. F. Gallagher, their solicitors, and respectfully assign and specify errors upon the record of the proceedings herein as follows:

I.

The District Court of Yavapai County, Arizona, and the Supreme Court of Arizona erred in not adjudging and decreeing that Lawler and Wells by estoppel have forever lost their right to insist on the terms of the escrow agreement of May 12, 1892, or to assert that they have any title or interest in the mines described in the prospectuses and maps of the Seven Stars Gold Mining Company.

II.

That the District Court of Yavapai County, Arizona, and the Supreme Court of Arizona erred in not adjudging and decreeing that appellants for themselves and others in like estate are entitled to a money decree against Lawler and Wells for $112,339.96 paid them by the Industrial Mining & Guaranty Company, and the $47,812.25 received by Lawler and Wells as the gross proceeds of the operation of the mines in controversy, produced by and at the sole expense of the Seven Stars Gold Mining Company.

III.

The District Court of Yavapai County, Arizona, erred in decreeing, and the Supreme Court erred in affirming the decree, that appellants were entitled to no relief and erred in dismissing the complaint.

IV.

The judgments and decrees of the District Court and Supreme Court of Arizona in this cause are contrary to the admissions of record made by appellees and the findings of fact made by the Supreme Court of Arizona.

V.

The Supreme Court of Arizona erred in not reversing the decree of the District Court and instructing that court to enter a decree, upon the prayer of appellants for general relief, adjudging and decreeing a lien upon the mining property in controversy of the same nature and to the same amount as was provided in the final decree entered in this cause by the District Court on July 12, 1898. (Trans., 165.)

Wherefore said appellants pray that the judgments and decrees of the District Court of Yavapai County, Territory of Arizona, and the Supreme Court of Arizona, be reversed, with such instructions for the entry of a decree in this cause in favor of appellants and others in like estate as to this Honorable Court may seem just and equitable in the premises.

J. W. Bretzinger.

M. F. Sweeney,

*Solicitors for Appellants.*

## BRIEF.

1. This suit will be sustained in the name of the twenty American and English stockholders here suing on behalf of themselves and all others in like condition.

*Jones* v. *Bolles*, 9 Wall., 364.
*Smith* v. *Swormstedt*, 16 How. (U. S.), 288.
*Bosher* v. *Richmond*, 89 Va., 455.
Cook on Stock and Stockholders, 737.
Beach on Modern Eq. Pr. Secs., 63, 67.
*Barcus* v. *Gates*, 89 Fed., 791.

2. Jurisdiction in equity on grounds of fraud, misrepresentation, equitable estoppel, and the prevention of multiplicity of suits, is unquestionable.

*Jones* v. *Bolles, supra.*
*Drexel* v. *Berney*, 122 U. S., 241.

3. In statements sent to the public for the purpose of inducing investments in a corporation, representations of fact must be made with strict accuracy, and every fact material to the investment must be disclosed.

Bisphams Eq. 5th, Sec. 208.
*Directors, etc.*, v. *Kisch*, 2 Law Rep. "English and Irish Appeals," page 113.
*Lagunas Nitrate Co.* v. *Lagunas, etc.*, 68 L. J. (Ch.), 699.
*Ry. Co.* v. *Muggeridge*, 1 Dr. and Sm., 363.
*In re* Olympia, L. R. (Ch. Div., Vol. 2, 1898), 153.
*Edington* v. *Fitzmaurice*, 29 Chan. Div., 459.
*Henderson* v. *Lacon*, Law Rep., 5 Eq., 262.
*Hubbard* v. *Weare*, 79 Iowa, 678.
*Hayward* v. *Leeson*, 176 Mass., 310.

4 The prospectus and accompanying documents must be construed together to determine meaning of any part.

*Schyville, etc., Co.* v. *Moore*, 2 Whart., 491.

5. The effect produced by the whole prospectus and map is to be considered.

*Andrews* v. *Mockford*, L. R., Vol. 1 (Q. B.), (1896), 372.

*Arnison* v. *Smith*, 41 L. R. (Ch. D.), 359.

6. The court, in reading statements of this character circulated generally among the people, will consider how they would influence the ordinary mind.

*Ry. Co.* v. *Muggerridge*, 1 Dr. & Sm., 363.

*Sessions* v. *Rice*, 70 Iowa, 306.

*Arnison* v. *Smith*, 41 Law Rep., Chan. Div., 359.

*Ellsworth* v. *Campbell*, 54 N. W., 477.

*Greenwood* v. *Leather, etc.*, 69 L. R. (Ch.), 135.

7. Due weight should be given to the testimony of the large number of persons who say they were led by the statements in the prospectus to believe the company the absolute owner of the mines.

*Clark* v. *Dickson*, 95 Eng. Com. Law Rep., 463.

8. The public had the right to rely on the prospectus without inquiry.

*Bosher* v. *Richmond, supra.*

*Clark* v. *Dickson, supra.*

*Andrews* v. *Mockford*, L. R., Vol. 1 (Q. B.), 1896, p. 372.

*Wilson* v. *Higbee*, 62 Fed. Rep., 723.

*Quirk* v. *Thomas*, 6 Mich., 120.
*Morgan* v. *Skiddy*, 62 N. Y., 325.
Thomp. on Corp., Sec. 1,312.
*Richardson* v. *Silvester*, L. R., 9 Q. B., 34.

9. The false representation must be material to the investment, but it need not be the sole inducement.

*Morgan* v. *Skiddy*, 62 N. Y., 319.
*Peek* v. *Derry*, 37 L. R. (Ch. Div.), p. 541.
Bigelow on Fraud, Vol. 1, p. 544.
*James* v. *Hodsden*, 47 Vt., 127.
*Arnison* v. *Smith*, 41 Law Rep., Chan. Div., 359.
*Pulsford* v. *Richards*, 17 Beav., 96.
*Smith* v. *Chadwick*, 20 Law Reports (Ch. Div.), 27.
*Edgington* v. *Fitzmaurice*, 29 Ch. Div., 459.

10. The law presumes that subscriptions coming in within a reasonable time after the general circulation of a prospectus, were induced by it. "The estoppel will be extended far enough to protect every one who may have been presumed to have acted upon or been governed by it."

Herman on Estoppel and Res Judicata, Secs. 794, 795, and cases cited.
*Hatch* v. *Spooner*, 13 New York Sup., 642.
*Bradley* v. *Poole*, 98 Mass., 183.
*Smith* v. *Chadwick*, 9 App. Cases, 187.

THE ESTOPPEL.

11. The rights of Lawler and Wells, under the Cowland contract, will be postponed to the equities of these purchasers of stock, because:

(*a*) Lawler and Wells enabled the fraud to be committed by putting the Seven Stars Gold Mining Company in the open possession and operation of the property, and concealing their own rights therein.

(*b*) They were silent and acquiescent with knowledge and full opportunity, when equity required them to assert their rights and stop the fraud.

(*c*) They knowingly aided in the perpetration of the fraud by participating in its inception, furnishing data, reports, map, etc., and with full knowledge, excusing defaults and extending payments.

(*d*) They accepted and still retain, with knowledge, moneys obtained from the public through the agency of their property and by representations of ownership which they now seek to contradict.

*Gill* v. *Griffith & Schley*, 2 Md. (Chan.), 270.
*Wendell* v. *Rensselaer*, 1 Johns. Chan., 353.
Pom. Eq. Jur., Vol. 2, Sec. 802.
*Watson* v. *Threlkeld*, 2 Esp., 637.
*Ramsden* v. *Dyson*, L. R. Eng. and Irish App. Cases, Vol. 1 (1866), 135.
*Jones* v. *Bolles*, 9 Wall., 364.
*Horn* v. *Cole*, 51 N. H., 287.
*Gregg* v. *Wells*, 10 Adolphus & Ellis, 90.
*Jowers* v. *Phelps*, 33 Ark., 465.
*Lucas* v. *Hart*, 5 Iowa, 415.
*Anderson* v. *Hubble*, 93 Ind., 570.
Herrman on Est. and Res. Judicata, 943, 938, 939, 952, 953, 954.

*Kettlewell* v. *Watson*, Law Rep., 26 Chan. Div., 507.
*Radant* v. *Werheim*, 106 Wis., 600.
*Cairncross* v. *Lorimer*, 3 MacQueen App. cases, 829.
*Truesdail* v. *Ward*, 24 Mich., 117.
*O'Connor* v. *Clark*, 170 Pa. St. Rep., 318.
*Bank* v. *Roop*, 48 N. Y., 292.
*Heyn* v. *O'Hagan*, 60 Mich., 150.
*Pickard* v. *Sears*, 6 A. & E., 469.
*Wells* v. *Pierce*, 27 N. H., 503.
*Powers* v. *New Haven*, 120 Ind., 185.
*Hendrix* v. *Southern Ry. Co.*, 130 Ala., 205.
*Green* v. *Smith*, 57 Vt., 268.
*Logan* v. *Gardner*, 130 Pa. State., 588.
*Tilton* v. *Nelson*, 27 Barb., 595.
*Storrs* v. *Barker*, 6 Johns. Chan., 166.
*Richardson* v. *Hyams*, 1 Lou. Ann., 286.

(aa) The principle of the doctrine of equitable estoppel is honesty and fair dealing, and in its application the court seeks to make parties do what honesty and fair dealing require.

Citations, *supra*.

(bb) No contractual or fiduciary relation necessary; knowledge imposes the duty to disclose the legal title.

*Logan* v. *Gardner, supra*.
*Anderson* v. *Hubble, supra*.
The Ottumwa Belle, 78 Fed. Rep., 643.
Cases under 8, *supra*.

(cc) Intent to mislead unnecessary; "fraudulent effect" or "unjust result" sufficient.

*Hart* v. *Giles*, 67 Mo., 179.

*Dair* v. *U. S.*, 16 Wall., 1, 4.
*Hill et al.* v. *Blackwelder*, 113 Ill., 283.
The Ottumwa Belle, 78 Fed. Rep., 643.
*Horn* v. *Cole*, *supra.*
*Anderson* v. *Hubble*, *supra.*
*Building Ass.* v. *Trevette*, 160 Ill., 390.

(dd) Presence of title on record is no excuse or justification for acquiescence, participation, and receipt of benefits here shown on the part of Lawler and Wells.

*Sumner* v. *Seaton*, 47 New Jersey Eq., 103; 19 Atl.
*Kingman* v. *Graham*, 51 Wis., 232.
*Carr* v. *Wallace*, 7 Watts., 394.
*Markham* v. *O'Connor*, 52 Geo., 183.
*Dodge* v. *Pope*, 93 Ind., 480.

(ee) There need be no direct communication between parties claiming the estoppel and the party alleged to be estopped.

*Anderson* v. *Hubble*, 93 Ind., 570.
*Clark* v. *Dickson*, 95 Eng. Com. La. Rep., 463.
*Kelley* v. *Fisk*, 110 Ind., 552.
*Stevens* v. *Ludlum*, 46 Minn., 160.
Other citations, *supra.*

(ff) "Standing by" does not necessarily mean actual presenec.

*Anderson* v. *Hubble*, *supra*, and cases cited.
Hermann, Sec. 954.
*Thompson* v. *Blanchard*, 4 N. Y., 309.
*Richardson* v. *Chickering*, 41 N. H., 380.
*Powers* v. *Saige*, 75 Wis., 494.
*Gatling* v. *Rodman*, 6 Ind., 289.

(gg) Estoppel may arise in favor of one not purchasing directly into the title. The doctrine has been applied for the protection of stockholders and creditors.

*Jones* v. *Bolles*, 9 Wall., 364.

*Trenton National Bank* v. *Duncan*, 86 N. Y., 222.

*Herm. on Est.*, Sec. 397.

*Livermore* v. *Maxwell*, 87 Iowa, 705.

(hh) These persons defrauded in the act of purchasing stock are under no theory of the law chargeable with the notice of what the records of the company showed. Even stockholders are not chargeable, as a matter of law, with notice of the acts of officers or resolutions of the directors.

Thomp. on Corp., Sec. 4,455.

Cook on Stockholders, Sec. 731, and cases cited.

(ii) A party who receives benefits gained by representations that the title to his property is in another, will not be permitted to assert rights inconsistent with the transaction to the injury of the person misled.

*Brewster* v. *Baker*, 16 Barb., 613.

*Wilkinson* v. *Blades*, L. R. (2 Ch.), 1896.

*Breeding* v. *Stamper*, 57 Ky., 140.

*Whitaker* v. *Williams*, 20 Conn., 109.

(jj) A party cannot participate in the fruits of a fraud and at the same time repudiate it as not his act.

Perry on Trusts, Sec. 172.

*Texas, etc., Co.* v. *Mfg. Co.*, 38 S. W., 404.

*Olmsted* v. *Hotailing*, 1 Hill., 317.

*Crans* v. *Hunter*, 28 N. Y., 389.

*Morse* v. *Ryan*, 26 Wis., 356.

(kk) "He who receives money or property or a benefit of any kind, under an instrument, whatever its character, or his relation to the maker, cannot question the instrument in whole or in part."

In re Peaslee's will, 25 N. Y., Sup., 940.

*Havens* v. *Sackett*, 15 N. Y., 365.

*Birmingham* v. *Kirwan*, 2 Schoales & Lefroy's Rep., 444.

*Wood* v. *Seely et al.*, 32 N. Y., 105.

(ll) In addition to the foregoing the following are different applications of the same principle that here estops Lawler and Wells from asserting their legal rights under the Cowland contract to the injury of these purchasers of stock, after having affirmed the representation of title and apparent ownership in the company by receiving the gross proceeds of the company's operation, the $50,000 of stock, the superintendency of Lawler, and the $112,339.96 sent from New York on behalf of the company.

*Field* v. *Doyon*, 64 Wis., 560.

*Leathers* v. *Ross*, 74 Iowa, 630.

*Maple* v. *Kussart*, 53 Pa. State, 348.

Hermann on Estoppel and Res Judicata, Sec. 1,063; 800.

*Wilkinson* v. *Blades*, L. R. (2 Ch., 1896).

*McConnell* v. *People*, 71 Ill., 481.

*Daniels* v. *Tearney*, 102 U. S., 415.

*Franklin* v. *Pollard Mill Co.*, 6 South. Rep., 685.

*Swain* v. *Seamens*, 9 Wall., 254.

*Fry* v. *Morrison*, 159 Ill., 244.

*Kinyon* v. *Kinyon*, 27 N. Y. Supp., 627.

(mm) The concealment of the important terms of a transaction or the secret retention of benefits by a grantor have always been held sufficient to show the fraud of a transaction and support a decree for the restoration of the property or money of the deceived purchaser or creditor.

*Robinson* v. *Elliott*, 22 Wall., 513.
*Gill* v. *Griffith, etc.*, 2 Md. Ch., 270.
*Wendell* v. *Van Rensselaer, supra.*

12. That one or two of the stockholders may have purchased with knowledge is no defense. Otherwise to corrupt one, would protect the fraud.

*New Sombrero Co.* v. *Erlanger*, 5 Law Rep. (Ch. Div.), 73.

13. Equitable estoppel is frequently held a ground for affirmative relief.

*Jones* v. *Bolles*, 9 Wall., 364.
*Kirk* v. *Hamilton*, 102 U. S., 68, and cases cited.
*Stoors* v. *Barker*, 6 Johns. Chanc., 88.
*Lucas* v. *Hart*, 5 Iowa, 415.
*Anderson* v. *Hubble*, 93 Ind., 570.
*Drexel* v. *Berney*, 122 U. S., 241.

14. The estoppel is commensurate with the representation and operates to put the title where it was represented to be.

*Grissler* v. *Powers*, 81 N. Y., 57.
Beach on Eq. Jurisprudence, 800.
*Trenton Baking Company* v. *Duncan*, 86 N. Y., 221, and cases cited.
*Ellsworth* v. *Campbell*, 54 N. W. Rep., 477.

15. A court of equity has power to decree a title to real estate as against a party whose conduct raises an estoppel.

*Jones* v. *Bolles*, 9 Wall., 364.
*Robbins* v. *Moore*, 129 Ill., 57.
*Lucas* v. *Hart*, 5 Iowa, 415.
*Kirk* v. *Hamilton*, 102 U. S., 68.
*Stone* v. *Tyree*, 30 W. Va., 701.
*Storrs* v. *Barker*, 6 Johns. Ch., 88.

As to Prayer for Money Decree.

16. In case Lawler and Wells are allowed to retain the mines, appellants and others in like estate are entitled to a money decree against Lawler and Wells for $112,339.96 paid them by the Industrial Mining & Guaranty Company, and $47,812.25 received by them as the gross proceeds of the operation of the mines in controversy, produced by and at the sole expense of the Seven Stars Gold Mining Company, upon these grounds:

(a) The moneys obtained from appellants and others in like estate by the fraudulent misrepresentations and concealment will be impressed with a trust in the hands of the Industrial Mining & Guaranty Company.

*Finlon* v. *Jansen*, 99 Calif., 591.
*Bank* v. *Johnson*, 51 Neb., 546.
*Dunn* v. *Quilling*, 94 Iowa, 233.
*American S. R. Co.* v. *Fancher*, 145 N. Y., 552.
*Nester* v. *Gross*, 66 Minn., 371.
Perry on Trusts, Secs. 171 and 217, and cases cited.
Beach on Trusts and Trustees, Sec. 182.

(b) The funds thus impressed with a trust will be followed into the hands of Lawler and Wells.

*Bundy* v. *Town of Mon.*, 84 Ind., 119.
*Smith* v. *Bowen*, 35 N. Y., 83.
*Holmes* v. *Gilman*, 138 N. Y., 384.
*Knight* v. *Knight*, 75 Ga., 386.
*Calhoun* v. *Burnett*, 40 Mass., 599.
*U. S.* v. *Waterborough*, 28 Fed. Cases, 417.
*Insurance Co.* v. *Insurance Co.*, 2 C. C. C. A., 541.
*Clarke* v. *Shee*, Cowper's Rep., 197.
*Morrow Shoe Mfg. Co.* v. *New England Shoe Co.*, 57 Fed., 685.
Sadler's Appeal, 87 Pa. St., 154.
*Swift* v. *Williams*, 68 Md., 236.

(c) Upon the facts found by the Supreme Court of Arizona the court should adjudge, as a matter of law, that if Lawler and Wells did not have actual, they had implied or constructive notice of how such funds had been obtained.

*Condit* v. *Maxwell*, 142 Mo., 266.
*Williamson* v. *Brown*, 15 N. Y., 364.
Perry on Trusts, Vol. 1, Sec. 223, Note b.
*Bank* v. *Bank*, 156 N. Y., 459.
*Baltimore* v. *Whittington*, 78 Md., 231.
*Hewitt* v. *Loosemore*, 9 Hare's Rep., 455.
*Whitbred* v. *Boulnois*, 1 Younge and Coll. Ex. R., 303.

(d) The question as to whether upon conceded facts implied or constructive notice arises is a question of law.

*Claflin* v. *Lenheim*, 66 N. Y., 306.
*Birdsall* v. *Russell*, 29 N. Y., 220.
*Van Doren* v. *Robinson*, 16 N. J. Eq., 261.

*Plumb* v. *Fluitt*, 2 Anstruthers, 432.
*Hewitt* v. *Loosemore*, 9 Hare's Ch. Rep., 455.
*Kennedy* v. *Green*, 3 Mylne & Keen's, 699, at page 719.

(e) The fact that the Industrial Mining & Guaranty Company deposited the funds obtained from the stockholders in its general bank account and therefrom drew in favor of Lawler and Wells to make the payments on account of the Cowland contract, does not so destroy the identity of the funds and make relief by money decree impossible. The withdrawals on account of the Seven Stars Gold Mining Company will be attributed to its funds.

*In re* Hallett's Estate, L. R., 13 Ch. Div., 696.
*National Bank* v. *Ins. Co.*, 104 U. S., 54.
*Pennell* v. *Deffell*, 4 De G. M. and G., 372.
*Woodhouse* v. *Crandall*, 197 Ill., 104.
*Hall* v. *Otis*, 77 Me., 122.

# ARGUMENT.

## I.

AS A DISTINCT AND ADEQUATE GROUND FOR AFFIRMATIVE RELIEF IN THIS CASE WE CONTEND THAT AS AGAINST THESE APPELLANTS, LAWLER AND WELLS, BY ESTOPPEL, HAVE FOREVER LOST THEIR RIGHT TO INSIST ON THE TERMS OF THE ESCROW CONTRACT OF MAY 12, 1892, AND THAT THE DISTRICT COURT OF YAVAPAI COUNTY, ARIZONA, AND THE SUPREME COURT OF ARIZONA, SHOULD HAVE ADJUDGED AND DECREED TITLE IN THE COMPANY FOR THE BENEFIT OF APPELLANTS AND OTHERS IN LIKE ESTATE.

The discussion which follows is intended to establish the foregoing proposition and thereby demonstrate the error of the seventh, eighth and eleventh conclusions of law of the trial court, viz. (Trans., 273):

"7. That no duty was at any time imposed upon John Lawler and Ed. W. Wells.

"To prevent or attempt to prevent the circulation and distribution of the prospectuses, maps and blank applications mentioned in the findings; or

"To prevent or attempt to prevent the sales of any shares of stock of the Seven Stars Gold Mining Company; or

"To inform the subscribers or proposed subscribers to said stock that they, said Lawler and Wells, were the owners of the legal title to the property in controversy nor any part thereof.

"8. That the purchasers of the capital stock of the Seven Stars Gold Mining Company were not authorized from reading the prospectuses, maps and blank applications distributed, to so construe the same as to believe or conclude therefrom that the legal title to the property mentioned therein, was vested in the Seven Stars Gold Mining Company.

"11. That John Lawler and Ed. W. Wells, or either of them, are not estopped from asserting herein a forfeiture of the escrow agreement, Exhibit A aforesaid, and the amendments thereto aforesaid, and their legal title to, and the right of sole and exclusive occupation of the property in controversy and every part thereof."

We contend that the facts established by this record show every element of an estoppel against the assertion of title by Lawler and Wells. This record shows the Seven Stars Gold Mining Company held out as the owner of the mines. It shows Lawler and Wells at times passively permitting and again actively assisting in such false appearance and assumption of ownership. It shows a multitude of innocent people investing their money in the belief of the reality of such assumed ownership. It shows, finally, innocent persons grievously injured by the overthrow of such pretended ownership by them who before acquiesced, fostered and affirmed the misrepresentation and received its fruits.

In brief, this record establishes as against Lawler and Wells three things, any of which, under the settled principles of equity, is sufficient to estop, viz.: (1) culpable passivity; (2) active assistance to misrepresentation; (3) receipt of benefits from misrepresentation.

We will consider as briefly as the record will permit the essential elements of this estoppel. In connection

with the discussion we respectfully ask the court to consider the statement, *supra*, and the authorities cited in our brief.

*First, the appearance and representation of ownership in the Seven Stars Gold Mining Company and the deception of plaintiffs thereby.*

On October 1, 1892, the Seven Stars Gold Mining Company was placed in possession. (Find. 13, Trans., 318.) From that date until the last subscriber had been deceived and drawn into the purchase of shares that company remained in the open and public possession and operation of the mines. They were operated in its name; its superintendent managed them; its workmen extracted the ore; its wagons carried the ore to the railroad; in its name that ore was billed to the smelter; paid by it, the smelter treated the ore; in the name of the company the ore was sold and the proceeds as the money of the Seven Stars Gold Mining Company went to the bank. That company was daily taking away the values in this mining property. Every common mark and *indicia* of title told of the ownership of the Seven Stars Gold Mining Company. This was the physical condition of things.

But physical possession and occupation and the resulting appearance of ownership were but the *background* of the fraud. About the time this possession and operation began Warner prepared and circulated a prospectus, every word of which was written with the manifest and unmistakable purpose to convey the impression, so necessary to induce the sale of stock, that the company was the owner of the property which was offered to the public, and to conceal that Lawler and Wells or any other person had any adverse interest therein. (Prospectuses

and map, Trans., 18-32.) Twenty-one men and women of presumptively ordinary intelligence have testified that the prospectus and map created the belief in their minds that the company owned the property. (Find. 42, Trans., 323.) The test being how the representations would influence the ordinary mind, this evidence is entitled to persuasive weight. The District Court and the Supreme Court of Arizona decided, however, that as a matter of law no person was authorized to believe from the representations in the prospectus and on the map that the property belonged to the company which was offering it for investment. (Trans., 273.) The soundness of this conclusion is an important question in this case. Before proceeding with its discussion, however, we beg to remind the court of the high standard of honesty and accuracy which equity requires from those who have any connection with the public advertisement of property for investment.

In Bispham on Principles of Equity, Sec. 208, the author says:

> "The rules in regard to fairness in representations are to be particularly observed in prospectuses of projected companies. The utmost candor and honesty ought to characterize such public statements. Those who issue a prospectus holding out to the public the great advantages which will accrue to persons who will enter into a proposed undertaking and inviting them to take shares upon the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as a fact that which is not so, but to omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality of the privileges and advantages which the prospectus holds out as an inducement to take shares."

This language was taken by Mr. Bispham from the leading English case of *Ry. Co.* v. *Muggeridge*, 1 Dr. and Sm., 363. A later English case, very often quoted, is *Directors, etc.*, v. *Kisch*, 2 Law Rep. (Eng. and Irish Appeals), 113. In that case this language expresses the views of the court:

> "The alleged representations are contained in a prospectus, the object of which was to invite the public generally to join the proposed undertaking. * * * It cannot be too frequently or too strongly impressed upon those who, having projected any undertaking, are desirous of obtaining the co-operation of persons who have no other information on the subject than that which they choose to convey, that the utmost candor and honesty ought to characterize their public statements."

Again, in *Henderson* v. *Lacon*, Law Reports, 5 Eq., 249, the language quoted by Bispham from the Muggeridge case is approved, and, referring to it, the court said: "I must say I think the result of all the cases which have occurred shows the great value of that *golden legacy.*"

In this country with equal unanimity the courts have exacted the same high standard of honesty in these public advertisements of the schemes of promoters.

A very recent case is *Savage* v. *Bartlett*, 78 Md., 561. The Supreme Court of Maryland there held that the law regarding false representations 'applies with even greater strictness in regard to representations set forth in a prospectus issued by a company for the purpose of inviting persons to join in the undertaking," and then quoted with approbation the Kisch and Muggeridge cases, *supra*, establishing the rule in England.

*Morgan* v. *Skiddy et al.*, 62 New York, 325, was an action in deceit for fraud in prospectus upon which plaintiff relied. Held:

"The company owned no property on the 'Bates lode,' and the testimonials in the prospectus respecting it were misleading and deceptive; they had no reference to the property actually owned by the company, although in connection with the false description they appeared to relate to it, and must have been so understood by persons reading the prospectus who had no other knowledge upon the subject. The false statement in the prospectus related to an existing fact which materially affected the value of the shares; it was prepared for the purpose of circulation and to induce investments in the stock of the company. * * * The representation was made to each person comprehended within the class of persons who were designed to be influenced by the prospectus; and when a prospectus of this character has been issued, no other relation or privity between the parties need be shown, except that created by the wrongful and fraudulent act of the defendants in issuing or circulating the prospectus and the resulting injury to the plaintiff. (*Clark* v. *Dixon*, 6 C. B. [N. S.], 453; Central Ry. Co. 1. Kish, Law Rep. [2 Eng. & Irish App.], 100.)"

The equity of this decision is manifest. Those who have the control of a prospectus know or should know all the facts material to the investment. On the other hand, the public know nothing but that which the prospectus tells them, and the very circulation of the prospectus is a general *invitation* to all persons *to rely implicitly* upon its representations. This Lawler and Wells knew, as every man of any experience must know.

With this principle in mind let us examine the public statements upon which the plaintiffs relied. We must read these documents together and take them as one representation. We must remember that they were to be read by persons of ordinary intelligence. That they were intended to influence every reader. We must constantly

keep in mind that persons reading them were in ignorance of everything unexpressed.

The American prospectus (Trans., 18) contains the conspicuous headline, "The Seven Stars Gold Mining Company." This name was taken from that of part of the property itself—"Seven Stars" mine. The caption then recites that the guaranteed dividends and agreement for redemption of stock "are the novel features offered *investors in an already producing gold mine* in Arizona, one of the greatest properties in this country." The public is thus invited to *invest in the property which is made the basis of this prospectus, and upon which the stock solely and necessarily rested for value.* Further, "The holders of the fifteen per cent. guaranteed stock *participate in the full earnings of the company.*" In the presence of the Cowland contract this is an unqualified falsehood. That contract provided that for over eighteen months Lawler and Wells were to receive the entire gross earnings of the corporation. (Trans., 33.) The prospectus continues: "This company presents an unusual opportunity for investors to acquire an interest in one of the richest and most extensive gold mines in the world." In other words, the purchase of stock was to give the stockholder an interest in this mining property—an impossibility in the absence of ownership in the company. The intending purchaser of stock is next given the reason why Mr. Warner connected himself with the enterprise in these words: "Hon. H. H. Warner * * * is so thoroughly convinced of the *extraordinary value of the property* that he has expressed his readiness to place himself at the head of the undertaking."

The prospectus then goes on describing the property, its magnitude and amount of ore in sight, the possibility

of further discovery, the five stamp mill on the property. "The output of the mine is at present about $1,000.00 per day. With 20 additional stamps now in the course of construction the output should reach $5,000.00 per day." *Thus it is the output of the property which is held forth as the inducement to subscribe.* Would not the ordinary man believe that the company asking him to buy stock owned this output? Yet, secretly, the output belonged to Lawler and Wells. Further reference to the property then follows: "It is estimated that an expenditure of $100,000.00 will disclose additional ore to the value of $3,000,000.00." Upon completion of the new mill—to say nothing of the additional mills which it is proposed to erect—the property will earn very large dividends for many years." The public is next told how the mine is being worked by the company, the nature of the vein, environment, etc. Reference is then made to the map which accompanies the prospectus. It is said that the mining property covers 210 acres and connected with it are "dam sites, water sites, timber claims, and town sites." Then prominently stated is the most material and important fact in this connection. Under the clause marked "TITLE"—the clause to which the purchaser would naturally look if the idea of questioning the ownership in the company that was offering the property ever entered into his mind—it is said: *"Titles are unquestionable,* the Seven Stars, Hillside, Happy Jack and other mines *being held* under United States patent."

Consider this last statement as to the title in connection with the fact that it was the Seven Stars Gold Mining Company that was then in actual possession and that the prospectus elsewhere informed the reader that it was that company that *held* the mines, and can there be an escape

from the conclusion that this reference to the title is a direct, unqualified representation that the mines were owned by the Seven Stars Gold Mining Company which was offering the property as its property for general investment?

This construction and representation is confirmed by other clauses which refer to the *company's* trading store, assay offices, staff quarters, blacksmith and carpenter shops, suitable boarding house, lodging house, mill and reduction works, engines and boilers, etc., and the statement that "*the company owns* valuable timber claims covering 180 acres." This construction of the prospectus, however, is put beyond doubt by another clause which states that the company was formed to acquire the property on October 1, 1892. Therefore the reader was led to believe, when he examined the prospectus after October 1st, 1892, and read of the possession of the company and the information as to its ownership, that in fact the company had acquired the property. It will be observed that the books for subscription were not opened until October 6, 1892, so subscriptions to the stock were not invited until after the date when it was stated that under the plan of its formation the company was to acquire the property. Observe, further, that from and after October 1st the company was in exclusive and open possession.

But this assertion of a purpose to acquire the property on October 1, 1892, is in itself manifestly false. Warner, as well as Lawler and Wells, knew that no such purpose existed; they knew that nothing was to occur changing the title on October 1, 1892; they knew that it was impossible under their secret escrow contract for the company to acquire the property until November 12,

1893. This affirmative assertion of a purpose to acquire the property on October 1, 1892, was therefore in itself a fraudulent assertion of a fact.

*Edgington* v. *Fitzmaurice*, L. R., 29 Chan. Div., 459, was an action of deceit for false representations in prospectus. The misstatements were as to the purpose for which the money received for the stock was to be used. The court held:

> "When we come to the third alleged misstatement, I feel that the plaintiff's case is made out. I mean the statement of the objects for which the money was to be raised. These were stated to be to complete the alterations and additions to the buildings, to purchase horses and vans and to develop a supply of fish. The mere suggestion of possible purposes to which a portion of the money might be applied would not have formed a basis for an action of deceit. *There must be a misstatement of an existing fact; but the state of a man's mind is as much a fact as the state of his digestion.* It is true that it is very difficult to prove what the state of a man's mind at a particular time is, but if it can be ascertained it is as much a fact as anything else. A misrepresentation as to the state of a man's mind is, therefore, a misstatement of fact."

But as a matter of fact as well as of law, the representations of the prospectus were made at the time the prospectus was actually received. The court finds that the distribution of the prospectus was being made during the month of October, 1892. (Finding, 37; Trans., 322.) Only $2,242 was paid for stock before October 1st. (Trans., 108.) Thus the subscribers receiving the prospectus after October 1, 1892, had the right to believe that ownership of the property had in fact already been acquired by the company and that the representations of ownership throughout the prospectus were perfectly truthful.

But with each prospectus was circulated a map. (Finding, 14; Trans., 318.) This map put at rest all inquiry as to ownership. It is undated. Upon it the proposed purchaser saw the mines to which he was invited to subscribe, and underneath the simple and conclusive assertion, *"A map of the group of mines belonging to the Seven Stars Gold Mining Company."*

The effect produced by the whole prospectus and map is to be considered.

In *Andrews* v. *Mockford,* L. R. (Q. B., 1896), 372, it is said:

> "It is an old expedient and seldom successful, to cross-examine a person who has read a prospectus and ask him as to each particular statement what influence it had on his mind, and how far it determined him to enter into the contract. This is quite fallacious; it assumes that a person who reads a prospectus and determines to take shares on the faith of it, can appropriate among the different parts of it *the effect produced by the whole."*

Statement that will reasonably mislead the ordinary reader wholly ignorant of the facts will be judicially held to be untrue.

> *Greenwood* v. *Leather Shod Wheel Co.,* 69 Law Jr. Reps. (Ch.), 135.

*Nowhere in the prospectus, directly or indirectly, is it shown that any other person had a charge or lien upon or interest in the mining property outside of the Seven Stars Gold Mining Company.* This, under the authorities, is equivalent to a direct negation that any other person or company held any right or interest in the property. It is the well settled rule that every material adverse fact not stated in public advertisements of this character, especially where such fact renders false affirmative state-

ments, is in theory of law negatived, and the reader is warranted in believing that adverse and injurious facts concealed do not exist.

In Muggeridge case, *supra*, it is stated that those who issue a prospectus must "omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality of the privileges and advantages which the prospectus holds out as inducements to take shares."

The Muggeridge case is directly in point, and we beg to further quote from the opinion:

> "It will be observed that the company is described not only as a railway company, but as a land company, showing that the dealing in or the possession of land was as much part of the functions and objects of this company as the formation of a railway. * * * These are the passages in the prospectus which appear to me more materially to bear upon this question. It is true that in no one of those passages, nor in any part of the prospectus, is it stated in express terms that the right of the land will accrue to the persons who should take shares *instanter*, or that they would have a certain and indefeasible title to the land. But on the other hand, there is a total absence of all mention of, or allusion to, futurity or contingency, or condition affecting the right to the land. There is not the slightest hint, that events might so turn out, that no shareholder would be entitled to a single rood of the land, which is here held out as the attraction to take shares. Now, it does appear to me that a person reading this prospectus and knowing nothing more than what is to be derived from the perusal of it, might well conclude from the language used that, if he accepted shares in the proposed company, he would thereby acquire a right to a certain portion of 200,000 acres of land, which had then been granted to the company, and that he would be entitled to such land unfettered by any condition, or contingency, or uncer-

> tainty, except, of course, the ordinary condition of paying up his calls. That, I think, is the natural and plain import of the language used in this prospectus."

To the same effect are *Gluchstein* v. *Barnes*, 69 L. J. R. (Ch.), 385; In re Olympia Limited, L. R. (Ch. Div.), Vol. 2, 1898.

See also *Hubbard* v. *Weare*, 79 Iowa, 678, in which it is held that to conceal material facts is fraudulent.

In *Ellsworth* v. *Campbell*, 87 Iowa, 532, 477, it was held that defendant concealed conditions to the sale which was equivalent to asserting that it was unqualified.

In *Pulsford* v. *Richards*, 17 Beav., 96, a prospectus case, the court say:

> "What, therefore, in my opinion I have to consider in the present case is, whether the prospectus so issued contained such misrepresentation or suppression of existing facts, as, if the real truth had been stated, it is reasonable to believe that the plaintiff would not have entered into the contract—that is, that he would not have taken the shares."

The suppression of a material fact, which a party is bound in good faith to disclose, is equivalent to a false representation that it does not exist.

*Tyler* v. *Savage*, 143 U. S., 79, 98.

In *Hayward* v. *Leeson*, 176 Mass., 310, the promoters omitted from their prospectus any showing that they were to receive stock in compensation for the promotion. The court held that this concealment invalidated their receipt of such stock and that it could be recovered back at the suit of future stockholders who purchased on the prospectus. This is so, the court held, in the absence of any intention to defraud, because future stockholders are leg-

ally entitled to a full disclosure of all material facts touching the investment.

Lawler and Wells must have known, and they will be presumed to have known, that Warner and the Industrial Company as promoters sustained a fiduciary relation to the subscribers and were bound to state the whole truth as well as nothing but the truth, regarding the property offered to the public.

See *Brewster* v. *Hatch*, 122 N. Y., 349, at page 362.

*Hayward* v. *Leeson, supra.*

We insist, therefore, that if this prospectus contained no language whose reasonable and natural import is affirmation of title in the company, *yet the omission to disclose the interest of Lawler and Wells was an affirmation that they had no interest. All this Lawler and Wells must have known when they saw the prospectus and map.*

This argument equally applies to the English prospectus. (Trans., 29.) There the representation of ownership was even more direct. It is said that "the mines *owned* by the company are situated in the Eureka Mining District," etc. And further: *"The title is indefeasible,* being United States patent to five claims, together with several locations as easements."

Accompanying this English prospectus was the same map stating that the property belonged to the company, and nowhere in the prospectus is there the slightest intimation that any person had any right or interest in the property excepting the Seven Stars Gold Mining Company.

We conclude, therefore, that appearance and representation of ownership by the Seven Stars Gold Mining Company is unquestionably made out by:

1. The open and public possession and operation in the name of the company and the dealings of the company with the public as owner.

2. The public statements affirming ownership in the company.

3. The concealment of all adverse titles and interests and implied affirmation that Lawler and Wells or any other person except the company had no interest.

*Equally unquestionable is the deception of plaintiffs by this appearance and representation of ownership in the company.* All the subscribers who have here testified —and it was as impracticable as it was unnecessary to call them all—say that they received the prospectuses and maps through the mail, examined them, and from such an examination believed that the company was the owner of the mining property which they described. Upon this belief they invested in the company. (Trans., 323.)

A prospectus is intended to influence the public, and every member of the public has a right to rely on its representations without investigation.

See cases cited in Brief, *supra.*

In Thompson on Corporations, Sec. 1,472, it is said:

> "It is *not necessary*, in order to support such an action, that the false representations were made directly to the plaintiff. It will be sufficient if they were contained in circulars, prospectuses, or other advertisements, with the view of influencing the public at large, or any member of the public who might be influenced by them, to purchase shares; and that the plaintiff saw them, and, on the faith of the statements contained in them, became a purchaser of shares. Nor is it at all necessary that there should have been any personal communication between the plaintiff and the defendant."

In *Bosher* v. *Richmond Co.*, 16 S. E., 360, held:

> "The law is rigid in its protection of the corporation and stockholders. Cook Stocks, Sec. 657. When a stockholder has been defrauded by such trustees (persons organizing and promoting the company) and seeks redress against the fraud, it is no answer to say that by proper inquiry he might have learned the truth, or by more vigilance he might have discovered the deception; and WHEN THE REPRESENTATIONS ARE BY A PROSPECTUS, HE IS NOT OBLIGED TO INVESTIGATE FOR HIMSELF, AND INVESTIGATE THE TRUTH OF REPRESENTATIONS, TO PROTECT HIMSELF AGAINST THE CHARGE OF NEGLIGENCE."

The deception is made out even if there were other inducements to the purchase of stock which were not fraudulent. If the appearance and representation of ownership was a *material* inducement to the investment, as all the witnesses testified (Trans., 323), and which is obviously reasonable, that is sufficient.

See cases cited in Brief, *supra*.

Sufficient evidence was taken to show that the public was relying upon the prospectus. (Trans., 323.) It was unnecessary to call each individual stockholder out of an aggregate of over 500 and to get from him exactly how and when he purchased. The law will presume that subscriptions coming in within a reasonable time after the general circulation of a prospectus were induced by it.

In Herman on Estoppel, Sec. 794, the learned author says:

> "Where a declaration is so general in its terms or made under such circumstances as to indicate that it was intended to reach third persons, or the community at large, the estoppel will be extended far enough to protect every one who may have been presumed to have acted or been governed by it."

And at Sec. 795:

> "Courts go a great ways in presuming that acts and declarations calculated to influence third persons have, in fact, reached their ears, and induced them to buy. Thus it was held that *bona fide* purchasers, who, by the deceptive acts of acquiescence of the wife in the will of her husband, might have had reasons for believing that its provisions would not be disturbed, would estop her, though it can not be shown that the purchasers acted on that belief. *This extension of equitable estoppels is peculiarly applicable to those statements which, like letters of credit or the prospectus of an insurance company, are addressed to all the world, and where the defendants had advertised that they would not refuse the payment of a loss on any ground short of fraud, they were held estopped from taking advantage of a failure to comply with the requisitions of the policy which was not actually fraudulent.* * * * In another case, Coleridge, J., says: 'I am of opinion that if an advertisement is put out to induce parties to enter into a certain contract, and an individual does afterwards enter into such contract, and then comes into court and complains of misrepresentation, *it is no part of his case to show that he was cognizant of the advertisement; prima facie, it will be taken that he was influenced by it.*' In another case, some evidence was given from which it might be inferred that the plaintiff saw the advertisement; it was held that the jury might well find that it was a material inducement for him to pay the money." (Authorities cited.)

We submit, therefore, that with the evidence of the twenty-one stockholders, and the legal presumption of reliance in cases of this kind the proof of the deception of appellants and all the other *bona fide* subscribers is amply sufficient.

The learned chancellor who presided at the trial of this cause in the District Court expressed his earnest conviction, after hearing the evidence, as follows (Trans., 157):

"That these stockholders have been the innocent victims of an outrageous fraud, no one who has heard this testimony can, for a moment, doubt."

And further (Trans., 158):

"These plaintiffs as a final resort of all these transactions and dealing between Lawler and Wells are the victims of a great wrong, of which the defendants have reaped almost the entire benefits and for which they have no redress if this court is powerless to afford them any relief."

The fraud and wrong thus found by the learned chancellor were accomplished through the agency of the false appearance and representation of ownership of these mines by the Seven Stars Gold Mining Company.

We have now shown:

1. A false appearance and representation of ownership in the Seven Stars Gold Mining Company.

2. Innocent persons induced by such false appearance and representation of ownership to invest in the stock of the company.

This brings us to the third important point in this question of estoppel, namely:

LAWLER AND WELLS, BY THEIR SILENCE, ACQUIESCENCE, PARTICIPATION, ASSISTANCE, RATIFICATION AND RECEIPT OF BENEFITS, ARE BOUND BY THIS APPEARANCE AND REPRESENTATION OF OWNERSHIP, AND PRECLUDED FROM QUESTIONING THE SAME TO THE INJURY OF THE PERSONS INVESTING IN THE STOCK.

From the admissions of record and the findings of the Supreme Court of Arizona, it appears:

1. Lawler and Wells from the beginning, with

knowledge, acquiesced in the Seven Stars Gold Mining Company dealing with the public as the owner of this mining property.

2. Lawler and Wells furnished the means as well as the opportunity of making and continuing the appearance and representation of ownership in the Seven Stars Gold Mining Company.

3. Lawler and Wells received copies of the prospectus and map and knew of their circulation and distribution and never protested nor made known their rights.

4. Lawler and Wells by extending payments fostered, encouraged and assisted in the deception of the public.

5. Lawler and Wells affirmed the representations of ownership made to the public by accepting money paid for stock on the faith of such representations, by accepting stock for extensions of time, and by the act of Lawler in accepting the management of the Seven Stars Co.

The leading case in this country as to estoppel by silence and inaction is *Wendell* v. *Van Rensselaer*, 1 Johns. Chan, 353. In that case a party took a conveyance of land which he kept secret for several years and permitted persons to purchase various parts of the land from his grantor and to improve the same. Such purchasers knew nothing of the party who had taken the conveyance of the land. He did nothing to mislead or deceive them. He simply remained silent with knowledge. The court observed the deed had been carefully concealed from the knowledge of the world throughout all the transactions between the parties.

> "By this means false colors were held out to the world, and the public were permitted to consider the property as belonging to the testator and to treat with him as the absolute owner".

So, in the case at bar, false colors were held out to the world and the public were permitted to treat with the Seven Stars Gold Mining Company as the absolute owner of the mines.

The court continues:

> "The defendant in his answer admits it to be probable that an opinion very generally prevailed and was entertained by the inhabitants of Albany that the testator continued owner of the land between the date of the deed and his death. The purchases made from him from time to time of parts of the premises were matter of public notoriety."

So here, 300,000 copies of this prospectus were distributed throughout the United States. The promotion was a matter of great public notoriety. Yet, Lawler and Wells, as did the defendant in *Wendell* v. *Rensselaer*, as stated by Chancellor Kent, "preserve a studied silence, and gave no notice to those purchasers, or to the world of his (their) title".

> "After this" said the learned chancellor in that case, "he cannot be permitted to start up with a secret deed (in itself of such doubtful credit) and take the land from *bona fide* purchasers under the testator. Having for such a length of time suffered the public to deal with the testator as the real owner, he cannot now be permitted to question or disturb any title which has thus been procured by his tacit assent. There is no principle better established in this court, nor one founded on more solid considerations of equity and public utility, than that which declares that if one man knowingly, though he does it passively, by looking on, suffers another to purchase and expend money on land under an erroneous opinion of title, without making known his claim, he shall not afterwards be permitted to exercise his legal right against such person. It would be an act of fraud and injustice, and his conscience is bound by this equitable estoppel. *Qui tacet consentire videtur*,

*Qui potest et debet vetare jubet. The East India Company* v. *Vincent,* 2 Atk., 83; *Hanning* v. *Ferrers,* 1 Eq. Cas. Abr., 356, pl. 10; Gilb. Eq. Cas., 83; *Raw* v. *Potts,* Prec. in Ch., 35; *Hunsden* v. *Cheyney,* 2 Vern., 150, and the case of Dr. Amyas, there cited; *Styles* v. *Cowper,* 3 Atk., 692; *Jackson* v. *Cator,* 5 Ves., 688; *Dann* v. *Spurrier,* 7 Ves., 231".

This statement of the controlling principle of equity is quoted, approved and applied by this Honorable Court in *Kirk* v. *Hamilton,* 102 U. S., 68.

The learned Chancellor who presided at the trial summarized the facts (and every fact here mentioned by him has since been judicially established of record) as follows (Trans., 160):

> "Considering the fact that at the time of executing the deed and agreement of May 12, 1892, Lawler and Wells had actual knowledge and notice that Warner's intentions were to incorporate a company and to use the language of one of the defendants themselves, 'Work it for all there was in it', the failure to record this agreement so that those dealing with Cowland and Warner and their associates should have constructive, if not actual notice of its existence, and the rights claimed by defendants thereunder; the delivery of possession to Warner, or his agent, and through him, or them, to the Industrial Company, and to the Gold Company, and the circumstances and conditions under which they took and retained the open, notorious and exclusive possession of the property, working, operating and dealing with them, and holding themselves out to the world and to those who did deal with them, that they were the owners of said property; the notice and knowledge which they must have had long before any of this stock was sold, that Warner, whatever his original intentions were, did not intend, or was not able to pay the purchase price himself, but expected to raise it all or at least a greater part of it, by the sale of the stock of this company; their participation, to some extent at least, in the preparation

of this prospectus, and the knowledge which they had, or would have had, had they not closed their eyes and ears, as to its contents, these and all of them are elements as it seems to me, which go to make up this complete and composite whole.

For while I do not give some weight and effect to this prospectus that counsel for plaintiffs do, so far as it charges these defendants, it is one of the elements which go to make up this constructive fraud, and though the testimony is somewhat conflicting, I think the reasonable deduction from it is that Lawler and Wells knew of its preparation and circulation.

Furthermore, these various extensions of the time for the payment under the original agreement, one of which, to wit: the first, was made before a share of this stock had been issued, and which, if it had not been made, would have rendered impossible the unfortunate condition out of which this litigation has arisen. But, by far the most important consideration, and the one which, as it seems to me, is controlling in this case, the acceptance and retention by them of large sums of money which, from their very nature came through this sale of stock. Add to this their conduct prior and subsequent to May 12, 1893, when the extension was made, the circumstances under which it was made, Lawler's election as manager at his and Wells' suggestion, the receipt and retention by them of $50,000.00 of full paid stock of this corporation, and the receipt and retention by them of large sums of money after receiving that stock, and after Lawler had been made manager and had accepted the management of this company, all of these things after they were fully advised of all of the facts and circumstances which had gone before, seem to me—almost if not quite, amount to a waiver of their rights in the future, if not a ratification of all that had been done in the past".

The record shows that at the time Warner put the Seven Stars Gold Mining Company into possession of their mines, Lawler and Wells locked up the contract which reserved their dominant possession and legal title

in the vault of the Bank of Arizona. (Trans., 315.) In that bank this contract remained, wholly concealed from the public throughout all this transaction, so long continued, so widely and publicly advertised and so generally enlisting the confidence and money of the public. At the time of the executio of this escrow contract Lawler and Wells turned over to Warner maps, reports, milling and smelters returns, etc., which were to be used by him in the preparation of the public advertisement by him of the property. (Find. 17, Trans., 319; Find. 20, Trans., 320.) Lawler was present in New York for five days at the office of the Industrial Mining & Guaranty Company while this material thus furnished by himself and Wells was woven into a prospectus. (Finding 20, Trans., 320.) He knew that the description of his property as the property of the Seven Stars Gold Mining Company was not done carelessly or inconsiderately, but designedly and after full deliberation, and for one purpose, namely; to get the public to invest money in stock on the faith of the property and in the belief that the value of the property was the value of the stock.

It is admitted by Lawler and Wells that they received copies of the prospectus and map. (Trans., 183, 2 and 184a,-2) It is found as a fact by the Supreme Court of Arizona that during the month of October, 1892, Lawler and Wells knew of the circulation of the prospectus. (Finding 37, Trans., 322) And again, it is found, under Finding 34, Trans., 324, "that said defendants knew that said prospectuses and maps were being distributed".

It is a well established doctrine that notice of an instrument is notice of its contents.

*Vandoren* v. *Robinson*, 16 N. J. Eq., 261.

But the moment they saw the map their attention must have been immediately struck by the conspicuous words, "A MAP OF THE GROUP OF MINES BELONGING TO THE SEVEN STARS GOLD MINING COMPANY." (See Map, Trans., 24.) These words apprised them that Warner was telling the public in clear and unqualified language that his corporation was the owner of the mines to which they secretly held title. Turning from the map to the prospectus they saw that Warner was selling to the public stock based entirely upon their mines for its value, and that nowhere in said prospectus did the reader derive the slightest intimation of the existence of the escrow contract or of any right or interest of Lawler and Wells either to the property or its proceeds or to money paid in for stock. As men of experience they knew that the persons who received the prospectus and map could and would rely upon their representations and in all reasonable probability would purchase stock on the faith of the ownership of their mines by the Seven Stars Gold Mining Company; they knew if the actual truth were disclosed, namely, that the Seven Stars Gold Mining Company could only acquire the title to the mines by paying $400,000.00, and that until and unless that amount of money was raised and paid on the contract of purchase the company had but a bare right of occupancy, not a share of stock would in all probability be sold as the wildest speculator would turn from a proposal to build a company upon such a foundation.

They saw this prospectus and map with these representations and with their rights wholly concealed, go forth to the public. From October 1, 1892, until September, 1893 (Find. 32, Trans., 322), while this prospectus was in cir-

culation and deceiving and drawing persons into the purchase of shares, Lawler and Wells did nothing to disclose their rights and prevent the deception of the public. Knowing that their title destroyed the value of the stock, they permitted men and women to buy that stock in ignorance of that title. Mails, telegraph and public press were at their service. They wrote no letter, protested to no officer of the company, gave out no interview, made no public announcement. They never sought to bring home to any creditor, or to the public, the slightest intimation that they and not the Seven Stars Gold Mining Company were the owners of this mining property or its proceeds. They were content to stand by in silence and see Warner get his money from the public to make his payments to them.

But the cause of appellants does not rest alone upon the *silence and inaction* of Lawler and Wells. The record shows affirmative acts of assistance and what is more cogent than all, receipt of the moneys gotten from the public. October 28, 1892, while the prospectus was being sent broadcast throughout the country, Warner went to Prescott. (Find. 21, Trans., 320.) He wanted an extension of time to make the payment falling due on November 12th of $100,000.00. *Then and there Lawler and Wells could have stopped the fraud.* If the representation of ownership had been made without their authority or consent they could then have repudiated and ended it. But they grant Warner an extension of time for a large part of the payment to December 12, 1892, during which time, as the established facts show, Warner would have a chance to get further results from his prospectus. (Trans., 320.) Receiving this extension Warner returned to New York and kept up the sale of the stock.

Was not this extension a *consent* to as well as a participation in the plan Warner was following in floating their property?

May 8th, 1893, Warner made a general assignment for the benefit of his creditors to Job E. Hedges. (Finding 22, Trans., 320.) Lawler and Wells knew of this assignment of Warner. (Finding 23, Trans., 321.) Therefore they must have known that it was impossible for Warner to personally make the payments under the Cowland contract, and they must have known that in such a situation Warner was dependent in the very nature of things upon the sale of stock to enable him to meet the terms of his guaranty to Lawler and Wells. *Nevertheless, Lawler and Wells grant him a second extension of time.* (Finding 23, Trans., 321.)

Moreover as a condition of this extension Lawler and Wells exacted of Warner $50,000.00 par value of the guaranteed capital stock of that company. (Finding, 24; Trans., 321.) Thus Lawler and Wells knowingly and deliberately became stockholders and interested themselves with Warner in this corporation that was a sham company, owning absolutely nothing, and engaged in deceiving the public by representing that it owned a group of mines secretly owned by Lawler and Wells. We submit that the demand and acceptance of this stock is the strongest evidence of the approval of Lawler and Wells of the steps Warner had taken to float the property. But more than this, Lawler and Wells as a further condition for granting this second extension, insisted that Lawler should become the manager of this Seven Stars Gold Mining Company, and on May 13, 1893, Lawler entered upon his duties as such manager, and until September 10, 1893, Lawler acted as manager of the Seven Stars

Gold Mining Company in the possession and operation of the mines in controversy. (Find. 25, Trans., 321.) During all this time the subscribers and stockholders and the public were kept in total ignorance of the legal title of Lawler and Wells, or their right to any of the proceeds of the mine, or to the acts of Lawler and Wells or Warner in reference to the legal title.

May 20, 1893, Lawler received notice in writing that remittances on account of the Cowland contract were being made from money derived from the sale of the stock of the Seven Stars Gold Mining Company. (Find., 26, Trans., 321.) Thus Lawler and Wells were positively informed in writing that they were the beneficiaries of the funds the public were paying to Warner in the belief that Hillside Group of mines *belonged* to the Seven Stars Gold Mining Company. The amount of such funds which they after such written notice actually received is immaterial so far as the question of estoppel is concerned. After the date of this positive notice in writing thus found by the Supreme Court of Arizona, Lawler and Wells received $11,200.00 on account of their escrow contract from the Industrial Mining and Guaranty Company. (Trans., 325.) We respectfully contend that this one fact found and established by the Supreme Court of Arizona, namely, the receipt of this notice in writing that they were receiving funds derived from the sale of the stock, coupled with their continued acquiescence, their failure to protest and their receipt of further funds, establishes incontrovertibly the estoppel here invoked.

Under the repeated decisions of this Honorable Court and other courts, silence with knowledge is sufficient to estop, and to silence must be added, in this case, affirma-

tive acts of participation and receipt of benefits. We will refer to further authorities which announce the principles of equity which, in our judgment, establish the estoppel.

In *Gregg* v. *Von Phul,* 1 Wall. (U. S.), 274, the ruling principle is stated:

> "No one is permitted to keep silent when he should speak, and thereby mislead another to his injury. If one has a claim against an estate and does not disclose it, but stands by and suffers the estate sold and improved, with knowledge that the title has been mistaken, he will not be allowed afterwards to assert his claim against the purchaser. And justly so, because the *effect of his silence* has actually misled and worked harm to the purchaser."

In *Ramsden* v. *Dyson,* Law Reps. Eng. & Irish Appeal Cases, Vol. 1, p. 129, 1866, Lord Cranworth stated the principles of equity on this subject. He said:

> "If a stranger begins to build on my land supposing it to be his own and I, perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that, when I saw the mistake into which he had fallen, *it was my duty to be active* and state my adverse title; and that it would be *dishonest in me to remain wilfully passive* on such an occasion, in order afterwards to profit by mistake which I might have prevented."

In *Logan* v. *Gardner,* 136 Pa. St., 588, the court holds:

1. The doctrine of estoppel *in pais* has been very much expanded in modern times.

2. Silence in ignorance of one's rights never estops, "but that mere silence with knowledge, is evidence from which a jury may find an estoppel." "Knowledge cre-

ates the duty to speak, and, where that exists, silence is enough to estop."

3. Acts of encouragement will estop, "without any fraud and irrespective of the party's knowledge of his own rights" on the principle that where one of two innocent parties must suffer, the loss must fall on the one who aided the wrong.

4. The case there at bar belonged to the "class of *Wood* v. *Wilson*, where silence with knowledge of expenditures being made by a party in possession may be sufficient to create an estoppel."

5. The lower court erred in telling the jury "something more than mere silence, something active or positive on the part of the plaintiff, was necessary to estop her."

In *Radant* v. *Wernheim*, 106 Wis., 600, a late and analogous case, there was nothing more than silence of the party held estopped. No affirmative act of assistance appeared.

Same is true in *Boehr* v. *Wolf*, 59 Ill., 470, where a person who held a contract of purchase of land knowing that another was intending to purchase the land of his vendor without notice of the existence of such contract, was held to have forfeited his rights because he failed to notify such other of the true state of the title.

This Honorable Court has frequently applied the same principle.

*Morgan* v. *Ry. Co.*, 96 U. S., 716.
*Kirk* v. *Hamilton*, 102 U. S., 68.

In *Jones* v. *Bolles*, 9 Wall. (U. S.), 364, this Honorable Court affirmed a decree that is ample precedent for the relief prayed in the bill in this case. In that case the

complainant Bolles, suing on behalf of himself and all other stockholders of the Mineral Point Mining Company, filed his bill of complaint for an injunction to restrain Jones from suing for, claiming or demanding against said company the purchase money of a certain tract of mining land in Wisconsin or any mineral rents for mineral raised on the same. The charge was that it had been represented by defendant Jones and others that the company had been seized in fee of the land and relying upon that representation Bolles had purchased stock in the company. Jones had executed a warranty deed to the company, but at the same time an agreement had been executed under which agreement he claimed a large balance due him for mineral rents and purchase money. This agreement had been concealed from Bolles at the time he purchased the stock. Jones, in his answer denied that he had made any representations as alleged, but admitted that he, with the president and secretary of the company, were in Boston at the time alleged and attended that meeting at Bolles' house on the subject and that he understood that the secretary had made representations to the effect complained of; that the room was large and pretty well filled and that he did not hear it. The Circuit Court perpetually enjoined Jones from claiming any purchase money or rents under the contract that had been concealed from the purchaser of stock. The court affirmed this decree and the effect of this affirmance establishes three important propositions applicable to this case:

(1) The remedy of appellants is in equity.

(2) It was proper for appellants to sue in their own behalf and in behalf of all stockholders.

(3) The proper decree is one confirming title in the company.

An instructive opinion is that of the Supreme Court of Arkansas in *Jowers* v. *Phelps*, 33 Ark., 465. It is there said:

> "Estoppels *in pais* depend upon facts, which are rarely in any two cases precisely the same. The principle upon which they are applied is clear and well defined. A party who by his acts, declarations or admissions, or by failure to act or speak under circumstances where he should do so, either designedly, or with wilful disregard of the interests of others, induces or misleads another to conduct or dealings which he would not have entered upon but for this misleading influence, will not be allowed, afterwards, to come in and assert his right, to the detriment of the person so misled. That would be a fraud. But it is difficult to define special acts or conduct which in all cases would amount to an estoppel. *Generally it is said that if the owner of property—with a full knowledge of the facts, stands by and permits it to be sold to an innocent purchaser, without asserting his claim, he will be estopped.* Although this will not embrace all species of estoppel *in pais*, which may be as diverse as are the nature of human transactions, it is, so far as it goes, about as safe and correct a rule as can be formulated. The leading idea is that a person shall not do, or omit to do, anything regarding his rights which, if taken advantage of by him, would work a fraud upon another; but, in this as in all other cases involving fraud, the exact limits and boundaries of fraudulent conduct are left undefined to be applied by the chancellor to the facts before him. * * * To stand by and see a sale to an innocent purchaser would be, however, a breach of moral duty, unless the owner meant to abide by it."

Hermann on Estoppel, at Sec. 978, citing a large number of authoritative precedents, clearly states the rule as follows:

"Where the owner holds out another or allows him to appear as the owner, or as having full power of disposition over the property, and innocent third parties are led into dealing with such apparent owner, they will be protected. Their rights in such cases do not depend upon the actual title or authority of the party with whom they deal directly, but are derived from the act of the real owner, which precludes him from disputing, as against them, the existence of the title or power which through negligence or mistaken confidence, he caused or allowed to appear to be vested in the party making the sale or conveyance."

In *Truesdail* v. *Ward et al.*, 24 Mich., 117, the same principle is thus expressed:

"'It is a universal law that if a man, either by words or conduct, has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words, or to the fair inference to be drawn from his conduct.' * * * Again, in *Nicholson* v. *Hooper*, Lord Cottenham said: 'A party claiming a title in himself, but *privy* to the fact of another dealing with the property as his own, will not be permitted to assert his own title against a title created by such other person, although he derives no benefit from the transaction.' 4 Myl. and C., 179, and in *Duke of Leeds* v. *Earl of Amherst* the same judge said: *'If a party, having a right, stands by and sees anothers dealing with the property in a manner inconsistent with that right, and makes no objection while the act is in progress, he cannot afterwards complain.'*"

The doctrine of estoppel by silence is stated by the Supreme Court of Indiana in *Anderson* v. *Hubble*, 93 Ind., 570, as follows:

> "*A mere failure to give notice of a right,* where another, without knowledge of the facts, is investing his money, and where it may be fairly concluded that he would not do so if informed of the facts, will generally preclude a subsequent setting up of the claim thus concealed."

See to the same effect other cases on estoppel cited in brief, *supra.*

But it is needless to accumulate authority. We invoke general principles. He who is silent when he ought to speak will not be heard when he should in conscience be silent. He who can forbid and does not, is deemed to assent. He who connives at a deceit, which he might have exposed will be justly required to bear the consequences instead of allowing them to fall on the injured party. Where one of two innocent parties must suffer he who trusts most and contributes most must bear the burden. He who once consents can invalidate no act proceeding upon that consent.

We submit it is wholly irrelevant to argue in this connection that Lawler and Wells were under no contractual obligation to the purchasers of stock, or that Lawler and Wells were under no fiduciary relation to the purchasers of stock, or that Lawler and Wells had no intention of deceiving anybody. Contractural obligation, fiduciary relation, and intent to deceive, are alike unnecessary, and their discussion under this point of our case wholly irrelvant. We make this emphatic because the learned counsel for appellees argued repeatedly in the court below that because of the absence of a contractual obligation, of a fiduciary relation, and of an intent to deceive, there could be no estoppel.

In the cases of estoppel quoted in our argument and cited in our brief, no contractual obligation, fiduci-

ary relation or intent to deceive appears. If A sees B selling his horse to C and permits the sale he is estopped. In such a case A and C are in law total strangers. They have made no contract, there is between them no trust relation, and the intent of A is immaterial.

In *Anderson* v. *Hubble*, 93 Ind., 570, held:

> "It is not necessary in order to the existence of an equitable estoppel, that there should exist a design to deceive or defraud. * * * The cases upon this subject were thoroughly reviewed in *Continental National Bank* v. *National Bank*, 50 N. Y., 575, and it was affirmed that there need not be a purpose or intent to deceive or defraud. In *Blair* v. *Wait*, 69 N. Y., 113, it was said, 'It is not necessary to an equitable estoppel that the parties should design to mislead.' A very strong opinion is that in *Stevens* v. *Dennett*, 51 New Hamp., 324, where it is said: 'Thus, *negligence becomes constructive fraud* —although, strictly speaking, the actual intention to mislead or deceive may be wanting, and the party may be innocent, if innocence and gross negligence may be deemed compatible.' "

See cases cited in brief, *supra*.

In such a case as this courts of equity apply the principles of natural justice, and wherever these require disclosure they raise the duty and bind the conscience and base upon the omission an equitable forfeiture to the extent necessary to the protection of the innocent party.

So also under the well settled principles of equity touching estoppel, it was unnecessary for appellants to show that the representations which deceived them were the work of Lawler and Wells. It is sufficient if Lawler and Wells maintained a culpable silence. As men of any experience, they must have known that the prospectus and map were circulated to sell stock and that persons would receive and read them and therefrom be-

lieve that the Seven Stars Gold Mining Company owned the mines. All cases which we have cited show that any proof that Lawler and Wells affirmatively said or did something to the knowledge of appellants and which deceived appellants is wholly needless.

In *Kelly* v. *Frick*, 110 Indiana, 552, a wife heard representations by her husband that she made no claim to property. She remained silent. It was held that she was estopped from asserting dower, the court saying:

> "Nor was it necessary for them to show that she herself spoke the words which induced the appellees to invest their money, for there was 'a standing by' that effectually worked an estoppel." (Authorities cited.)

Nor was it necessary to prove that Lawler and Wells were physically present at the stock sales. The Supreme Court of Indiana in *Anderson* v. *Hubble, supra*, discusses this question, saying:

> "The term 'standing by,' so often used in the books and reports in discussing cases of estoppel does not mean actual presence or actual participation in the transaction, but it means silence where there is knowledge and a duty to make a disclosure. In *Gatling* v. *Rodman*, 6 Ind., 289, it was held that the phrase '*standing by*' does not import an actual presence, but *implies knowledge under such circumstances as renders it the duty of the possessor to communicate it.* The cases of *State* v. *Holloway*, 8 Blatchf., 45; *Ellis* v. *Diddy*, 1 Ind., 561; *Catherwood* v. *Watson*, 65 Ind., 576, and other cases, approve this definition. In *Richardson* v. *Chickering*, 41 N. H., 380, the definition is accepted as the correct one, and the doctrine of *Gatling* v. *Rodman*, *supra*, expressly approved."

There are many cases where the party claiming the estoppel had no knowledge of the real owner, who was

silent, secret and passive. In point are *Anderson* v. *Hubble, supra; O'Connor* v. *Clark,* 32 Atl., 1029; *Logan* v. *Gardner,* 136 Pa. St., 588; *Richardson* v. *Hyams,* 1 Lou. Ann., 286.

In *Logan* v. *Gardner, supra,* the Supreme Court of Pennsylvania said:

> "Knowledge creates the duty to speak, and where that exists, silence is enough to estop."

In the great number of cases in which the owners of property have been held estopped to assert title as against a municipality or railroad company that has expended money in improvements or construction upon their land, it is almost invariably the case that the municipality or railroad company knew nothing of the person who subsequently claimed to be the owner and were not influenced in the slightest degree by any affirmative act on his part.

It is well settled that a party who enables another to assume the credit of ownership, need not be actually present when the act is done by which the third party is deceived.

*Radant* v. *Werheim,* 106 Wis., 600.
*Thompson* v. *Blanchford,* 4 N. Y., 309.

Upon the principles and authorities cited we respectfully submit that this record presents a clear case of estoppel by culpable silence and participation and assistance in misrepresentation of title.

BUT WE NEED NOT REST OUR CLAIM OF ESTOPPEL UPON THE SILENCE OR ACQUIESCENCE OR ASSISTANCE OF THE REAL OWNER. WE HAVE AN INFINITELY STRONGER CASE IN THE RECEIPT BY LAWLER AND WELLS OF THE BENEFITS OF THE FRAUDULENT PROMOTION OF THE PROPERTY.

Lawler and Wells received, with knowledge, the moneys taken from the public by a deception in the use of their property and by representations and apparent ownership which they now seek to contradict.

It is found by the Supreme Court that the Industrial Company was the agent of the Seven Stars Gold Mining Company, to sell the stock and apply the proceeds in the interest of its principal. (Find. 40, Trans., 323.) As such agent it paid the cost of the operation of the property, while Lawler and Wells were receiving the gross proceeds of such operation as provided in the concealed escrow agreement. (Find. 47; Trans., 324.) It is conceded further that the Industrial Company sent direct to Lawler and Wells, or their agent, the Bank of Arizona, $112,339.96 under the Cowland agreement.

The Supreme Court expressly finds that the Seven Stars Company had no source of income other than the sale of stock (Finding 28, Trans., 321) and of necessity, therefore, the moneys paid for it to Lawler and Wells were derived from that source.

Moreover, the Supreme Court finds that on May 20, 1893, Lawler and Wells received express notice in writing that remittances on account of the Cowland contract were being made from funds derived from the sale of stock. (Finding, 26; Trans., 321.) Such receipts from the sale of stock made the remittances to Lawler and

Wells possible. Without the stock sales they never would have been made. As heretofore shown, Lawler and Wells had perfect knowledge of this fact. With this knowledge they received and retained the moneys out of which appellants were defrauded.

In this situation, after receiving the benefit of the fraudulent promotion, will Lawler and Wells be permitted to dispute the representations made to the public or assert the title which was concealed?

The truth is this: Lawler and Wells insist upon retaining $112,339.94 paid in cash and $67,799.86 paid to them as the proceeds of the ore extracted by the Seven Stars Company and the benefit of enormous development work and valuable fixtures and machinery, when they know that all of such cash, ore, development work and machinery were realized and produced by this false prospectus which their acquiescence sanctioned and to which their successive extensions gave full play. And they insist on keeping all this and with it the mines under a harsh forfeiture clause in a secret contract, the terms of which were contradicted and concealed by this prospectus, which, to their knowledge and with their consent, was robbing the public of the money which they were receiving.

No rule of law is sustained by more abundant authority than that if one person, even though a stranger, without authority or right, assumes to negotiate or dispose of the property of another, who is the legal owner, and such owner knowingly receives and retains profits, proceeds or benefits flowing from such negotiation or disposition, he thereby affirms and validates and estops himself from questioning rights growing out of such negotiation and disposition.

See authorities cited in Brief, *supra*.

In *Field* v. *Doyon*, 64 Wis., 560, 25 N. W., 653, a mortgagee of certain property with knowledge that the property had been illegally sold by the mortgagor, accepted the purchase money. The court say:

> "The fact of such sale was known to the mortgagee when he received the purchase money for the property so sold, and having received the money without objection, knowing of the fraud which would be perpetrated upon the purchaser if he should enforce his mortgage, equity and good conscience require that he shall either release his mortgage or return the purchase money. * * * The injustice of holding both the money and property is so apparent that it is unnecessary to cite authorities upon the point. * * * The fact that the sale was made without his knowledge at the time does not change the relations of the parties. * * * Bigelow on Estoppel, 3d Ed., 579, says: 'In like manner, if one without actually inducing another to act in a particular way, assent to the thing done and seek to derive a benefit from it, he cannot, in case of disappointment, repudiate the validity of the act assented to.' *Beall* v. *Barkley*, 10 B. Mon., 261, 254; *McConnell* v. *People*, 71 Ill., 481."

*In re* Lart, *Wilkinson* v. *Blades*, Law Reps., 2 Ch., 788, 1896, it appeared that Wilkinson had stood by while legal proceedings were being had for the construction of a will. He was not a party to the action or bound by anything therein determined, but he accepted as heir a part of an annuity divided in accordance with the decree. Chitty, J., held that Wilkinson was not bound by the judgment as a matter of law, *"but by his conduct after the judgment and under the judgment, knowing all the circumstances and deliberately taking the benefit of it, knowing that in a certain event that judgment might prove adverse to his material interests, he stood by, and by taking the money has acquiesced if ever a man could acquiesce."*

In *Brewster* v. *Baker,* 16 Barb., 613, the defendant claimed that he purchased a boat from one Thompson and had no knowledge of plaintiff's title; and that plaintiff after being apprised of the sale received from Thompson a part of the purchase money paid for the boat. Held:

> "It is a well-established principle that where the owner of property stands by and sees another sell it as his own to a *bona fide* purchaser and makes no objection and gives no notice of his rights, he will be held to have sanctioned the sale, and will not afterwards be permitted to assert his title as against such purchaser; and the same rule I apprehend prevails where the owner is informed of the sale of his property by another upon credit and does not object to it or give the purchaser notice of his rights, but stands by and permits such purchaser to pay the purchase money as it becomes due to the vendor and receives the whole or any portion of it from the vendor."

So, in *Breeding* v. *Stamper,* 57 Ky., 174, the court applied the doctrine that where a party receives part of the purchase money derived from the sale of his property he can not afterwards say that the sale was unauthorized and fraudulent and that the party who paid the money he received obtained no interest in the property.

To the same effect is *Whittaker* v. *Williams,* 20 Conn., 97.

So in *Osgood* v. *Nichols,* 5 Gray., 420, the court held that he who receives the fruits of a sale is estopped from setting up title in himself inconsistent with that which the seller pretended to convey.

*Bank* v. *Roop,* 48 N. Y., 292, involved an equitable estoppel. Said:

> "He was present at the time of the conveyance to Roop. He knew the facts. He would be benefited by having the cash payment of Roop on account of

> the purchase price increased, as the money was to be applied to debts owing by Merrill B., either to him or for which he was liable. He allowed Roop to make his payments under his mistaken and injurious belief as to the facts. He should then have spoken. The principle is too well settled to require the citation of authority that one can not stand by in *silence* when he knows that another is acting upon an erroneous state of facts and thereafter claim the benefit of the correct state of facts, if such claim will tend to the injury of the other person. *Much more, is this rule just in a case where, by his silence, he derives an immediate and direct advantage over the injured party. His silence then becomes deceit and fraud. The suppression of the truth in such a case has the same effect and is equally culpable with the assertion of a falsehood.*"

In *Texas Consol., etc.*, v. *Dublin, C. and M. Co.*, 38 S. W., 407, certain officers of a corporation, to effect a transaction, made false representations. The corporation, taking and enjoying the fruits of the transaction, asserted that it was not affected by the false representations because such persons had no right or authority to make them. Held:

> "But appellant says that it should not be held responsible for the fraud because it was not accomplished by the acts of the corporation, but was through the *ultra vires* acts of its officers and directors. In other words, it says to the appellee: 'You have been cheated and swindled, not by me, out of your property, but by my officers and directors, whom I could not authorize to defraud you, and because I could give no such authority you can not disturb me in my enjoyment of the fruits that I received from the fraudulent hands of my agents.' How stands the law on this proposition? * * * *A corporation can not, any more than a natural person can, retain an advantage which has come to it by fraud, without thereby making itself answerable to the fraud.* This being so, it is no answer to an application to be re-

lieved from such a contract for the corporation to say: 'It is true you were entrapped into the contract by fraud. Fraudulent misrepresentations and concealments were the proximate causes which induced the agreement on your part. But, as this fraud was committed by one not our agent, we claim the advantage accruing from it.' This upon its face is absurd. By adopting the contract, the corporation adopts the means by which it was procured. The person who procured it becomes their agent, and the acts by which he procured it becomes their acts by ratification."

Lawler and Wells can not derive a benefit from this transaction without accepting it as it was—without adopting the instrumentalities upon which the sale to the public proceeded.

*Elwell* v. *Chamberlin*, 31 N. Y., 611.

Equally strong is the estoppel upon another well settled principle. Lawler and Wells have accepted benefits gained by this prospectus. They have accepted the fruits of that instrument.

*In Re* Peaslee's Will, 25 N. Y. Sup., 940, held:

"The learned counsel for the appellant, while citing no authorities asserting a contrary proposition, has carefully analyzed and elaborately discussed nearly all the cases we have cited, in order to make it appear that they are distinguishable from the case at bar. *In their facts they are different from this case, and they differ from each other, but they all tend to make good the assertion which may be found running through the books, that he who receives money or property or a benefit of any kind under an instrument, whatever its character, or his relation to the maker of it, can not question the instrument, in whole or in part.*"

See also *Havens* v. *Sackett*, 15 N. Y., 365.

Hermann, at Sec. 800, says:

> "No man can adopt that part of a transaction which is favorable to him and reject the rest to the injury of those from whom he derived the benefit. This application of the law of equitable estoppel admits of less mistake or misapprehension than any other, and is a favorable doctrine with all tribunals whenever the circumstances are such as to admit of its application. Therefore, where those who are entitled to avoid a sale, adopt and ratify it, equity will estop them from afterwards setting it aside for reasons which are too plain for statement. *Where a sale of land is made no one can be permitted to receive both the money and the land.*"

We have liberally quoted the language of these authorities because in our judgment they apply exactly and decisively to the case at bar. Viewing this case in the aspect most favorable to Lawler and Wells, it is this: Warner offered their property to the public for investment as the property of a corporation he was promoting. In this way he realized a large sum of money paid by people who believed they were obtaining an interest in the property and its earnings. Lawler and Wells accepted and now insist upon retaining the moneys paid in by the parties thus deceived. At the same time they insist upon keeping the property which Warner offered to the public. Is such conduct honest. Is it equitable? Does not every dictate of common honesty and every principle of equity demand that if they retain the money of the public they must make the promotion good—they must relinquish the title to the property which was the basis of the stock sold, or return the moneys received from the subscribers?

*Did the presence of the title of Lawler and Wells of record prevent the estoppel here claimed?*

The Supreme Court found that Lawler and Wells "did not at any time protest against the preparation or circulation of the prospectuses, maps and applications for subscriptions to stock herein mentioned, and they did not at any time or at all in any way attempt to give any notice of their rights in the Hillside group of mines to any of the plaintiffs or purchasers of stock of the Seven Stars Gold Mining Company except as such notice might be imputed to the said plaintiffs and stock purchasers through and by virtue of the recorded title in said defendants, of the property in controversy, as in finding one herein set out." (Finding, 38; Trans., 322.)

The point will be made that all persons in the United States and England relying upon the prospectus and purchasing stock could not in law be deceived by its representations because they were charged with *constructive notice* of the records of Yavapai County, Arizona. It was argued in the court below that the record of this title excused the silence, inaction, acquiescence, assistance and receipt of benefits of Lawler and Wells. We there insisted and now insist that there is no authority which sustains this contention. The leading case is *Sumner* v. *Seaton*, 47 N. J. Eq., 103 (19 Atl.), a case which so ably disposes of this contention of counsel for appellee that we beg to quote it at some length in lieu of any discussion of our own.

In *Sumner* v. *Seaton*, 47 N. J. Eq., 103, held:

> "But counsel for the defendant insisted that both Mrs. Smith and complainant are chargeable with notice of the record title of defendant, and argued that they had no right, in the face of it, to suppose that they had title. * * * Courts of equity have in many cases, given parties the benefit of an honest supposition as to title where the slightest examination of the record or other equally available source

of information would have disclosed their error. In fact, to exclude the application of the maxim from cases where the party has implied or constructive notice of title from the record, would confine its application to a very narrow field. * * * Chancellor Zabriskie, in *Dellett* v. *Kemble*, 8 C. E. Gr., 58, held a party entitled to equitable aid against a judgment creditor of his grantor, where the judgment creditor had stood by and, without notice, permitted the former to build on the property in the honest belief that it was free from incumbrance, when he could have discovered the judgment by a search. In *Town* v. *Needham and Harvey*, 3 Paige, 545, the title of Harvey, one of the defendants, to an undivided one-fourth of the premises at the death of his grandmother, clearly appeared by the will of the former owner, which was a part of complainant's chain of title, but he was granted relief against Harvey, on the ground that he bought and made improvements in the honest supposition that the other tenants in common, through whom he derived title, had in some way acquired and were the owners of the whole title. So in *Brown* v. *Bowen*, 30 N. Y., 519, the title, which was barred by estoppel, was found on the public record. In *Storrs* v. *Barker*, 6 Johns., 166, the plaintiff claimed under the devise of a married woman to her husband, and was chargeable with the knowledge that it was void; and it was held that he was justified in supposing that the title had been validated by some action between the devisee and the heir at law, and the heir at law, having stood by and encouraged the purchase by plaintiff from the devisee, was held estopped. In *Chapman* v. *Chapman & Gansamer*, 59 Pa. St., 214, where the plaintiff held under a long lease, and the defendants held in severalty parcels of the whole tract under subsequent conveyances from the same original owner, and plaintiff was held estopped from setting up his lease by his positive encouragement as to defendant Chapman, and his mere silence as to defendant Gansamer, I infer that plaintiff's lease was a matter of record, since, if not recorded,

defendants could have pleaded that they were *bona fide* purchasers for value without notice and need not have relied upon the estoppel. The position, that, in general record notice of the title is sufficient to defeat the estoppel where it rests on *mere silence*, receives qualified support from Prof. Pomeroy in his treatise on Equity, Sec. 810; and also from Mr. Bigelow, in his last edition of his treatise on estoppel, p. 594. I have examined *the case cited by these authors in support of the text, and they are all distinguishable from the case in hand. They each lack one of its important features, viz.: that the person sought to be estopped by his silence knew, or had reason to suppose, that the person asking the protection of the estoppel was acting in good faith on an erroneous supposition as to the title.*"

The court then cites from opinion of Strong, J., in *Hill* v. *Epley*, 31 Pa. St., 331, as follows:

"It seems also to be well established that silence in some cases will estop a party against speaking afterwards. Thus, if one suffers another to purchase and expend money upon a tract of land, and knows that that other has a mistaken opinion respecting the title to it, and does not make known his claim, he shall not afterwards be permitted to set up a claim to that land against the purchaser. His silence then becomes a fraud. But silence without such knowledge works no estoppel. It is only when silence becomes a fraud that it postpones. * * * Clearly, if David Witherow (the plaintiff's grantor and one of the tenants in common) had not attended the sheriff's sale, nothing would have been required of him after he had his deed upon record. This is conceded. But if it be admitted that his presence at the sale imposed upon him the duty of giving other notice than that which his recorded deed furnished, and which was consequently known to Epley, it must be because he saw that the purchaser was still acting under an erroneous belief that the whole title was somehow in Samuel (the other tenant in common

> and defendant in the execution). Nothing else could make his silence work a fraud. But how could he see that? And how is such knowledge affirmatively brought home to him? There is no evidence of any such erroneous belief. The land was being sold as the land of Samuel Witherow, it is true. But Samuel had an interest in the land. Neither the execution, nor the sheriff, nor the crier, asserted that that interest amounted to the entire fee simple. * * * It is impossible under such circumstances, to see how David's silence could be construed into an admission that Samuel owned the whole, because there was no assertion by the writ, by the sheriff, or by any one, that he did. * * * If the sheriff had offered for sale a tract of land belonging to David in severalty, in which Samuel had no interest, the consequences of silence might have been different."

After quoting the above, the learned New Jersey chancellor continued:

> "I believe this to be a correct statement of the doctrine, and I conceive that it fully disposes of the attempt to avoid the effect of the silence in this case by an appeal to the record title. *The question is not so much what the party setting up the estoppel might or ought to have known or supposed as what he actually did know and suppose to the knowledge of the other party.*"

Lawler and Wells must have known that the parties here claiming the estoppel knew nothing about the mines and their owners except what the prospectus and map represented. They well knew that the maps and prospectuses were going about the country and that multitudes of people, relying implicitly upon their representations, were investing in the stock and the property which it represented. They knew that such persons were ignorant of Lawler and Wells, or of any title, interest or contract held by them, and that such persons were equally

ignorant of the recorded title of Lawler and Wells. If while they knew that such purchasers were being thus deceived as to the title, and while they were participating and contributing and deferring payments and receiving benefits, as here shown, they intended to rely upon their record title for defense, then this very reliance upon that record title in the presence of all these facts intensifies the dishonesty of their conduct.

Another stronger case is *Markham* v. *O'Connor*, 52 Georgia Rep., page 183, the court says:

> "The legal question in the charge resolves itself into this: Is a mortgagee who has his mortgage duly recorded, if he stand by at a public sale of the property, hear a public announcement that the purchaser will get an unincumbered title, and say nothing, estopped from setting up his mortgage against one who buys at such sale, and pays his money under the impression that he is getting a good and unincumbered title. * * * Was it Mr. Markham's legal or equitable duty to have spoken, under the circumstances and announcements put by the judge, and as detailed by at least some of the witnesses? Was it contrary to good conscience, supposing it was then his intent to insist upon his mortgage, to keep silence? Had he a right to consider that he had done enough when he had put his mortgage upon record? * * * Why should the fact that his interest in the premises is as a mortgagee and not as owner make any difference? I take it that the authorities, though it must be admitted that they are not in harmony, may in the main be harmonized, if we consider the principle on which the doctrine is based. They all go on the idea that it is a man's equitable duty to interfere by the assertion of his right when he sees some one about to act upon the truth of a denial of that right. * * * The true doctrine was put in the charge as given. Markham, under the circumstances as supposed, would be estopped, *not because* he was guilty of an intended fraud at the time of the act, *but because* it would be

a fraud, if, acting as he did, he should now have the benefit of the mortgage, assuming that the announcement was made, as some of the witnesses say, that the property was sold clear and free from incumbrances. We think it was Mr. Markham's duty, if he intended to insist on his mortgage, to let the truth be known, either at the bidding, or to notify the purchaser before the title was made, or the notes given, or money paid. If he failed to do any of these things, we do not say that he was guilty of a fraud in not doing so. But the law, in our judgment, is that if he failed, as stated, it would be a fraud to set up his mortgage now; that he is estopped; that the law holds him to the implied admission he then made, either that his mortgage was settled, or that there was some arrangement between him and Sells by which he would get his money out of the proceeds of the sale. He may have intended no wrong at the time. It is the setting up of his mortgage now that is wrong."

To the same effect, see *Carr* v. *Wallace*, 7 Watts, 394.
*Krugman* v. *Graham*, 51 Wis., 232.
*Keyes* v. *People*, 197 Ill., 638.

Under these authorities we insist that the records in Yavapai County, Arizona, are no excuse for the conduct of Lawler and Wells. Aside, however, from the authorities, it would be announcing a dangerous doctrine to hold that parties might permit the fraudulent promotion of their property in this way and actively assist in the prosecution of the scheme and enjoy the benefits flowing from the deception, and then escape from all liability for such conduct by appealing to the doctrine of constructive notice.

*The form of the relief in case the estoppel is adjudged.*

Appellants pray in their amended complaint:

"That this Honorable Court, upon the final hearing hereof, decree that the defendants Lawler and Wells have by their conduct estopped themselves and they are now estopped as against the plaintiffs and others in like estate from asserting that the Seven Stars Gold Mining Company is not the owner of the mines and mining properties described on the prospectus and pictures upon the said map, and ordering, adjudging and decreeing that the full title to the said mines and mining property, and the improvements thereon, and the personal estate therewith connected, and every part thereof is in the Seven Stars Gold Mining Company, to be held by the said mining company under such decree for the benefit and in the interest of its *bona fide* stockholders, plaintiffs and others in like estate," and for accounting, damages, etc.

We contend that this prayer presents a proper form for a decree proceeding upon estoppel. We have the authority of this Honorable Court directly in point.

*Jones* v. *Bolles*, 9 Wall., 364.

There, as we have seen, the Circuit Court entered a decree compelling the holder of the legal title to relinquish the same to the company and enjoining its subsequent assertion. That decree was affirmed by this Honorable Court.

Aside from this case it is established by abundance of authority that a court of equity may create and decree a title by estoppel and compel conveyance from the party held estopped.

*Wade* v. *Bunn*, 84 Ill., 117.
*Starrs* v. *Barker*, 6 Johns. Ch., 166.
*Favill* v. *Roberts*, 50 N. Y., 227.
*Stone* v. *Tyree*, 30 W. Va., 701.
*Kirk* v. *Hamilton*, 102 U. S., 68.

In this case the conveyance decreed must necessarily go to the corporate fiction, the Seven Stars Gold Mining Company. It was represented to be in the company. The plaintiffs believed the title was there when they purchased. The estoppel goes to the extent of the representation. Lawler and Wells must make the appearance and representation of ownership in the company good. Such a decree as prayed in the amended complaint would inure solely to the benefit of the *bona fide* stockholders. The title would then stand in the name of the company, and the property would be dealt with by the court entering the decree in the interest of the persons entitled to the estoppel.

There can no longer be any question that estoppel by conduct is a sufficient ground for affirmative relief.

*Jones* v. *Bolles, supra.*
*Starrs* v. *Barker, supra.*
*Drexel* v. *Berney,* 122 U. S., 241.
*Morgan* v. *R. R. Co.,* 96 U. S., 716.
*Wood* v. *Seely,* 32 N. Y., 105.

In *Horn* v. *Cole,* 51 New Ham., 287 (12 Am. Rep., 111), the court reviews the cases of estoppel, saying:

> "Relief was given according to the circumstances of the case—sometimes by enjoining suits at law, in which the legal title was set up, and sometimes by decreeing conveyances and the cancelling of deeds and other instruments; but in all these cases relief was given in equity contrary to the strict legal rights of the defendants."

The extent of the estoppel is discussed in *Grisslar* v. *Powers,* 81 N. Y., 57. Held:

> "As a general rule the estoppel created by a false representation acted upon, is commensurate with the thing represented, and operates to put the party

entitled to the benefit of the estoppel in the same position as if the thing represented was true."

In *Trustees, etc.* v. *Smith*, 118 N. Y., 634, the court say:

"When so applied it (estoppel) is as effectual as a deed would be from the party estopped."

Upon these authorities we respectfully ask that this Honorable Court reverse the decree herein and remand the same with instructions to enter a decree in accordance with the first prayer of the amended complaint. (Trans., 191.)

## II.

UPON THE FINDINGS OF FACT OF THE SUPREME COURT OF ARIZONA IN THIS CAUSE, APPELLANTS, FOR THEMSELVES AND OTHERS IN LIKE ESTATE, ARE ENTITLED TO A MONEY DECREE AGAINST LAWLER AND WELLS FOR $112,339.96 PAID THEM BY THE INDUSTRIAL MINING & GUARANTY COMPANY AS THE AGENT OF THE SEVEN STARS GOLD MINING COMPANY, AND THE $47,812.25 RECEIVED BY LAWLER AND WELLS FROM THE SEVEN STARS GOLD MINING COMPANY AS THE GROSS PROCEEDS OF THE OPERATION OF THE MINES IN CONTROVERSY PRODUCED BY AND AT THE SOLE EXPESE OF THE SEVEN STARS GOLD MINING COMPANY.

The figures in this proposition are taken from the findings of the Supreme Court of Arizona. The Industrial Mining & Guaranty Company, between November 12, 1892, and August 4, 1893, paid to Lawler and Wells, on account of the Cowland contract in escrow, $112,339.96. (Finding 47, Trans., 324, 325.) That sum was paid direct to Lawler and Wells. Besides that amount Lawler

and Wells received $47,812.25 as the gross proceeds of the operation of the mines by the Seven Stars Gold Mining Company. (Finding 46, Trans., 324.) That amount, namely, $47,812.25, was earned at the mines while the Industrial Mining & Guaranty Company, as the agent of the Seven Stars Gold Mining Company, was defraying the entire expense of such operation. (Finding 57, Trans., 326.) The Seven Stars Gold Mining Company operated the property from October 1, 1892 (Finding 13, Trans., 318), to about August 17, 1893. (Finding 30, Trans., 321.)

It is found by the Supreme Court of Arizona that remittances to the Bank of Arizona on account of the Industrial Mining & Guaranty Company after November 1st were placed to the credit of the Seven Stars Gold Mining Company. (Find. 30, Trans., 321.)

We contend that upon the facts of this case Lawler and Wells have no right to retain, as against appellants and others in like estate, the aforesaid sums of $112,339.96 and $47,812.25. (Finding 30, Trans., 321.) We so contend, because said sums of money were obtained by fraud from appellants and others in like estate, and that in the hands of the Industrial Mining & Guaranty Company, as the agent of the Seven Stars Gold Mining Company, they were impressed with a constructive trust arising out of such fraud, and that impressed by such constructive trust they were received by Lawler and Wells with either actual or constructive notice. As to the $112,339.96 paid directly to Lawler and Wells on the concealed Cowland contract out of moneys taken from the public by the fraudulent prospectus, and as to the $47,812.25 derived from the operation of the property at the expense of the Seven Stars Gold Mining Company, the case is equally clear.

It will be observed that it is unnecessary, in order to sustain this contention for a money decree, to hold that the prospectus and map represented title in the Seven Stars Gold Mining Company. It is sufficient to find that such prospectus and map contained false representations, and that by such false representations appellants and others in like estate were induced to pay to the Industrial Mining & Guaranty Company, as the agent of the Seven Stars Gold Mining Company, the proceeds of the sale of stock, $253,128.05. (Finding 54, Trans., 54.) That both the English and American prospectuses misstate and conceal material facts has been shown.

It is a well settled principle of equity that property or money obtained by fraud will be impressed with a constructive trust in the hands of the defrauding party or in the hands of any one receiving such money or property with actual or constructive notice of the means by which the money or property had been obtained.

See authorities in Brief, under 16, *supra.*

Equity will follow and compel the return of funds obtained by fraud from any person who does not receive them without notice, in due course of business and for a valuable consideration.

In *Insurance Company* v. *Insurance Company,* 2 C. C. A., p. 541, decided by the Circuit Court of Appeals of the Seventh Circuit, a fraud was committed and the defendant received the benefit of it. The court said:

> "The moneys thus received and applied by Dimick to pay the defendant's losses were received by the defendant as completely, for all practical purposes, as they would have been if he had transmitted them to the defendant, and the defendant had paid them over to the assured in settlement of the loss. (*Pratt* v. *Foote,* 9 N. Y., 463.) The law looks at

the substance of the transaction, and is quite unconcerned about its form. * * * The case is one for the application of the rule that *he who seeks to avail himself of the advantages of the act of another, after knowledge of its fraudulent character, must be held to adopt the fraud, although at the time of the act he was ignorant of it.* The doctrine is elementary and prevails at law as well as in equity, that a person, though innocent himself, cannot retain an advantage obtained by the fraud of another, in the absence of some consideration moving from himself."

In *Morrow Shoe Mfg. Co.* v. *New England Shoe Co.*, 57 Fed. Rep., 685, it is said:

"Whether these parties were guilty of actual participation in the fraudulent scheme of Davis or not, they certainly did deal in the goods obtained by fraud recklessly, and with guilty knowledge, or, which is the same thing, with knowledge of such facts and circumstances as would have put prudent and cautious men on inquiry.

* * * The cardinal principle in all such cases is that the property obtained by fraud shall not be placed beyond the reach of the party defrauded, either by the fraudulent vendee or others chargeable with the knowledge of the fraud. To permit it would be to allow the party to profit by his fraud."

See Story, Secs. 1265, 1266.

Perry on Trusts, Vol. 1, Sec. 172, quoting from *Hortopp* v. *Hortopp*, 21 Beav., 259, says:

"'That where once a fraud has been committed, not only is the person who committed the fraud precluded from deriving any benefit from it, but every innocent person is so likewise, unless he has innocently acquired a subsequent interest; for a third person, by seeking to derive any benefit under such a transaction, or to retain any benefit resulting therefrom, becomes *particeps criminis*, however innocent of the fraud in the beginning.'"

It might be true if Lawler and Wells were perfectly innocent of participation in the fraud upon appellants, and received the moneys which appellants had paid for the stock wholly without any notice, actual or constructive, of the means by which such moneys had been obtained, they could hold the money as against the appellants. Positive and definite information is, however, unnecessary. It is sufficient if they had constructive notice of that fact, and the question as to whether or not upon a state of conceded facts a party will be charged with notice is a question of law.

In *Claflin* v. *Lenheim*, 66 N. Y., 306, the court said:

> "Whether these circumstances were sufficient to put the plaintiffs on inquiry, or in other words, whether they amounted to constructive notice of the fact which an inquiry would have disclosed, viz., the revocation of the agency, was a question of law, to be determined by the court, and it was error to submit it to the jury. (*Am. Linen Thread Co.* v. *Wortendyke*, 24 N. Y., 550; *Howe* v. *Thayer*, 17 Pick., 91.)
>
> Constructive notice is a legal inference from established facts, and when the facts are not controverted the question is one for the court. Whether, under a conceded state of facts, the law will impute notice, is not a question for the jury. (*Birdsall* v. *Russell*, 29 N. Y., 220, 249.)"

In *Vandoren* v. *Robinson*, 16 N. J. Eq., 261, the court said:

> "It avails nothing that the defendants deny actual notice. Constructive notice is knowledge imputed on the presumption, too strong to be rebutted, that the knowledge must have been communicated. 1 Story Eq. Juris., Sec. 399; 2 Sugden on Vendors, 1,041, Sec. 7."

See also

*Rhodes* v. *Outcalt*, 48 Mo., 370.
*Jordan* v. *Pollock*, 14 Geo., 156.

The great principle of equity is that no man shall derive profit from a fraud, and wherever a party receives money or property out of which another has been defrauded and claims the right to hold it because it was received for a valuable consideration and without notice, total absence of knowledge and of those facts which raise the implication of notice must clearly and positively appear.

Perry on Trusts, Vol. 1; Sec. 219, and cases cited.

While the Supreme Court of Arizona at one place in its findings finds that Lawler and Wells had no actual notice of the source of the moneys paid them until the commencement of this action, and at another place in its findings finds that on May 20, 1893, nearly a year before the commencement of this action, they received notice in writing that moneys being paid them were derived from the sale of stock, nevertheless, the conclusion of that court does not control. This court will look at all of the facts found, and decide for itself whether or not it will charge notice upon Lawler and Wells. A brief summary of these facts incontrovertibly leads to the conclusion that Lawler and Wells are chargeable with notice.

The knowledge that Lawler and Wells received on May 12, 1892, that Warner intended to incorporate a company to eventually take title to the mines, the long period which they gave him within which to make payments, the presence of Lawler for five days in the office of the Industrial Mining & Guaranty Company while the prospectus was in course of preparation, the knowledge which Lawler then gained of the prospectus, the fact that they must have known that a prospectus was intended to sell stock, their knowledge of its wide dis-

tribution and circulation, the two extensions which they granted to Warner after having such knowledge, the way in which their money was being, from time to time, remitted, in various amounts, but not in the fixed amounts provided in the contract of escrow, thus showing it was being derived from some uncertain source, the negotiations which preceded both extensions, the receipt by Lawler and Wells of $50,000 of guaranteed stock, Lawler's management for over three months of the affairs of the Seven Stars Gold Mining Company at the mines, the express notice in writing, on May 20, 1893, that moneys paid were being derived from the sale of stock, the express notice to Lawler that persons were being induced to buy stock by the representations as to the value of the Hillside mines, the fact that the heavy payments were made to Lawler and Wells during the time they knew the prospectus and map were in process of circulation, the fact that all remittances to Lawler and Wells were placed to the credit of the Seven Stars Gold Mining Company, the fact that that company had no source of income other than the sale of stock, if these and other facts established by this record fall short of actual notice and knowledge, so far as its ever possible for a party to prove actual knowledge of his adversary, then we respectfully submit that they are such an array of facts and circumstances as justify beyond doubt the rule of implied or constructive notice.

In *Whitbred* v. *Boulnois*, 1 You. & Coll. Ex. R., 303, Baron ALDERSON laid down the rule as follows:

> "When a party having knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries, does not make, but, on the contrary, studiously avoids making such obvious inquiries, he must be taken to have notice of

> those facts, which, if he has used such ordinary diligence, he would readily have ascertained."

There is no pretense in this case that Warner made any effort to conceal from Lawler and Wells any of his acts here shown. Everything done in perpetrating the fraud was open, overt, public. The truth as to the title alone was hidden and concealed.

In *Hodges* v. *Coleman*, 76 Ala., 116, the rule is stated:

> "That notice of facts sufficient to put one on inquiry is the equivalent of the notice of the fraud itself."

The presumption of notice is conclusive, and the party will not be allowed to say that he had no actual knowledge. His knowledge of the circumstances being sufficient to make it his duty to inquire and to render any inaction on his part unconscientious. His failure to pursue the path of duty is no excuse or defense.

*Baltimore* v. *Whitington*, 78 Md., 231.
*Sickles* v. *White*, 66 Texas, 178.
*Plumb* v. *Fluitt*, 2 Anstr., 432.
*Hewitt* v. *Loosemore*, 9 Hare's Ch. Reps., 455.

In *Hewitt* v. *Loosemore, supra*, the Vice-Chancellor said:

> "Constructive notice is knowledge which the court imputes to a party upon a presumption, so strong that it cannot be allowed to be rebutted, that the knowledge must have been communicated."

See also,

*Kennedy* v. *Green*, 3 Myl. & K., 699, at page 719.
*Garrard* v. *Ry. Co.*, 29 Pa. St., 154.
*Vandoren* v. *Robinson*, 16 N. J. Eq., 261.

Constructive notice arises from circumstances as would lead a reasonably cautious man to investigate.

Perry on Trusts, Vol. 1, Sec. 223, Note B.
*First National Bank* v. *Bank*, 156 N. Y., 459.
Story on Equity Juris., Sec. 400.
*Condit* v. *Maxwell*, 142 Mo., 266.

We contend that the facts found upon this record establish actual knowledge and notice of Lawler and Wells as to the manner in which the funds received by them were raised. But in the absence of actual knowledge and notice, the justice of the application of the doctrine of implied or constructive notice to the facts in the case at bar is manifest.

The facts found are that the Industrial Mining & Guaranty Company was the agent of the Seven Stars Gold Mining Company to sell the stock, and the Industrial Company, as such agent, received from stock purchases all moneys which were paid on account of the purchase price of such stock. (Finding 40, Trans., 323.) These moneys were deposited in the general bank account of the Industrial Mining & Guaranty Company. (Finding 49, Trans., 325.) Then the Industrial Mining & Guaranty Company drew a check for each payment on its own fund and it was sent to the Bank of Arizona and then placed to the credit of Lawler and Wells on account of the purchase price of the property. (Finding 48, Trans., 325.) As these payments were received and turned over to Lawler and Wells the amounts were placed to the credit of the Seven Stars Gold Mining Company. (Finding 30, Trans., 321.) It was one distinct and clearly defined transaction.

It will thus be seen that it is the common case of an agent receiving moneys of his principal, depositing them

in his own bank account with other funds, and then drawing checks thereon for payments on account of a supposed indebtedness of the principal. It has the same effect for all practical purposes as if the identical moneys had been transmitted to Lawler and Wells. The moneys flowed from appellants and others in like estate through the Industrial Company to Lawler and Wells.

*Continental Ins. Co. of New York* v. *Ins. Co. of Pa.*, 2 C. C. A., 541.

By the deposit of the funds in the general bank account of the Industrial Company their identity was not destroyed.

See authorities in Brief, Point 16 (e).

It will be presumed that the intention was to draw out the funds belonging to the Seven Stars Gold Mining Company.

*Knatchball* v. *Hallett*, Law Reps., 13 Ch. Div., 696.

*Moyers* v. *Cummings*, 17 App. Cases (Dis. of Columbia), 269.

*Smith* v. *Combs*, 49 N. J. Eq., 420.

*Woodhouse* v. *Crandall*, 197 Ill., 104.

The following extract from the opinion of his Honor, Judge Truesdale, is clearly sound:

> "That some time prior to the 28th day of October, 1892, Cowland and Warner, as a result of previous negotiations between them and the said Lawler and Wells, secured from the latter an extension of the time for the payments required under said contract of May 12, 1892, and at or about that time said Wells and said Lawler were informed and had actual notice that said Warner, or said Cowland, or both of them, were either unable or had no desire or intention of making any further payments on the said contract of May 12, 1892, and were either obliged

or intended to look to the receipts from the sale of stock in this corporation and from ore and bullion to make the future payments; and I find as a fact, that all payments to, and received by, Lawler and Wells from the time these negotiations which lead up to the extension agreement of October 28, 1892, were received by them with actual knowledge and notice of Warner's and Cowland's intentions, *and that all such payments were received by them with constructive notice that they were derived from the sale of the stock of the Seven Stars Company, and that all additions and improvements made on these properties and all expenses incurred in the production of ore and bullion therefrom were paid from funds received from a similar source.*"

It will be perceived that the entry of the money decree here prayed will work no injury or injustice to Lawler and Wells. On the contrary, after satisfying such a decree they will remain greatly enriched by the transactions shown upon this record. Warner paid them $51,000.00 upon the Cowland contract, which they will still retain. (Stipulation, Trans., 105.) More than this, they have had the use of the rest of the money for over five years. They will retain the property and the additional machinery and the improvements placed upon it, and for that portion of the money which they will be decreed to relinquish they paid absolutely nothing. They have parted with nothing of value which creates an equity in their favor for the retention of the money of these appellants.

III.

If this Honorable Court reverses the decree in this cause with instructions that a decree be entered adjudging title to the mining property in controversy in the Seven Stars Gold Mining Company for the benefit of appellants and others in like estate, or a lien thereon to the extent of the moneys received by Lawler and Wells from the sale of stock and the operation of the property by the Seven Stars Gold Mining Company, we submit that such instructions for a decree should further provide that Lawler and Wells account for all ores, bullion, or other property taken by them out of or from the mining property since the commencement of this suit.

Respectfully submitted.

G. W. KRETZINGER,
M. F. GALLAGHER,
*Solicitors for Appellants.*

# Supreme Court of the United States.

**OCTOBER TERM, A. D. 1902.**

*No. 174.*

CLINTON B. WISER, C. M. FIELD, JOHN A. KERR, JAMES A. FERGUSON, DORSEY NEVILLE, MARY M. HEATH, JOHN J. MILLER, HENRY L. MUGSFORD, WILLIAM J. FOSTER, EDGAR G. MILLER, L. F. HOIRNE, SIDNEY G. LAW, EDWARD M. SMITH, HARPER M. SMITH, BENJAMIN GOODMAN, LESTER M. CROUCH, JOHN B. CLUTE, KATIE T. COURTNEY, H. S. ANDERS, AND CECIL QUENTIN, APPELLANTS,

*vs.*

JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD MINING COMPANY, INDUSTRIAL MINING AND GUARANTY COMPANY, AND JOHN GRIFFIN, RECEIVER, APPELLEES.

## REPLY BRIEF SUBMITTED FOR APPELLANTS.

MAY IT PLEASE THIS HONORABLE COURT:

The brief for appellees was not filed until Saturday, February 20, and we did not obtain a copy until the following Monday We propose now to reply to the contentions of

the learned counsel, and at the same time point out specifically the findings bearing upon the inquiries made by members of the court during the progress of oral argument.

The basic proposition upon which counsel rest the defense of Lawler and Wells is that the findings do not affirmatively show they knew that the moneys of appellants received by them had been obtained by false representations.

To this proposition we reply :

1. *The burden was upon appellees Lawler and Wells* to show they received the funds of appellants without any notice of the fraud, or of circumstances suggestive of inquiry to an ordinarily prudent and conscientious mind, and in the absence of an affirmative finding of want of notice, actual and imputable, appellees cannot retain the moneys out of which appellants were defrauded.

2. The true import of the findings, taken as a whole, is that Lawler and Wells had actual knowledge of the representation of ownership of the mines by the Seven Stars Gold Mining Company.

## I.

The learned counsel for appellees erroneously assumed, as did the supreme court of Arizona (see opinion, Trans., 290), that the prayer for the money decree proceeded upon the same grounds and required the same proofs as the prayer for title. On the contrary, *the rule is settled that where money or property obtained by fraud passes into the hands of a third person, he cannot retain it without showing its receipt in due*

*course of business, for a valuable consideration, and without any notice of the fraud.*

Bigelow on Fraud, vol. 1, p. 494.
Miller *vs.* Fraley, 21 Ark., 35.
Haskins *vs.* Warren, 115 Mass., 514.
Chaffin *vs.* Heirs of Kimball, 23 Ill., 36.
Campbell *vs.* Whitson, 68 Ill., 240.
Brown *vs.* Fitch, 43 Conn., 512.
Throckmorton *vs.* Rider, 42 Iowa, 84.
Perry on Trusts, sec. 219.

This rule is manifestly just and reasonable, and necessary for the relief of those defrauded.

The law places no great burden upon one who receives the fruits of a fraud in requiring him to show that he acted without any knowledge and gave value.

This honorable court has frequently decided that where a note is shown to have been fraudulently put into circulation, the burden shifts to the holder to show he received it before maturity, without notice, and for a valuable consideration.

Thompson *vs.* Bank, 150 U. S., 237.
Stewart *vs.* Lansing, 104 U. S., 509.

And this doctrine universally prevails.

Smith *vs.* Livingston, 111 Mass., 342.
Gordon T. Co. *vs.* Abbott, 44 N. J. Law, 257.
Randolph on Commercial Paper, vol. 2, sec. 1026.
L., N., A. and C. R'y Co. *vs.* Ohio, etc., 57 Fed., 42.
Shain *vs.* Goodwin, 46 Fed., 564.
Merchants' Bank *vs.* Brunswick, 33 N. J. Law, 170.

In cases like that at bar equity requires the most positive and specific denial and disproof of knowledge.

Perry on Trusts, sec. 219, and cases cited.

Story on Equity Juris., sec. 400.

The rule is stated by the learned counsel in his brief, page 25:

"Where a special finding is silent upon a material fact, it is deemed a finding as to that fact against the party who has the burden of proof."

## II.

The learned counsel for appellees contends in his printed and oral arguments that it is impossible to trace the moneys of these appellants to Lawler and Wells. Counsel offered no criticism of the many authorities cited in our former brief, which we believe are applicable to the facts here found, and which announce the now clearly established doctrine in equity that where an agent receives funds of his principal and mingles them with his own, and then draws from the common fund, withdrawals for his own use will be attributed to his funds, and withdrawals in behalf of his principal attributed to the funds of his principal.

Here the Industrial Company was the agent of the Seven Stars Gold Mining Company to sell its stock, receive the proceeds and expend them as such agent in behalf of its principal (Find. 40). It received such funds, it deposited them in a bank account with funds derived from other sources and which it was using in connection with other enterprises, and from this common fund it paid out in behalf

of its principal, the Seven Stars Gold Mining Company, the payments made to Lawler and Wells, and these payments, when received by Lawler and Wells, were credited to the Seven Stars Gold Mining Company (Find. 30). It is clear that the Industrial Mining and Guaranty Company had no authority as the agent of the Seven Stars Gold Mining Company to use the funds derived from its stockholders, except in this particular transaction with Lawler and Wells. *It does not appear that such funds were used for any other purpose. It does not appear that after October* 1, 1892, *any funds other than those of the Seven Stars Gold Mining Company were used in paying Lawler and Wells.* It must be assumed that the intention was to use the funds of the Seven Stars Gold Mining Company in making the disbursements in its business.

Perry on Trusts, sec. 841.

We also beg to cite recent cases which directly refute the contention of counsel.

Pearce *vs.* Dill, 149 Ind., 142.

Blair *vs.* Hill, 165 N. Y., 672.

Smith *vs.* Combs, 49 N. J. Eq., 420.

But counsel say that the Industrial Mining and Guaranty Company paid out of this transaction more than it received from the stockholders. If this were true it would be no answer to our contentions, because to the extent that the moneys of appellants were used they could be recovered (Perry on Trusts, secs. 831, 842). But the findings do not bear out the claim of counsel. It is found that the Industrial Mining and Guaranty Company expended *in behalf of the Seven Stars Gold Mining Company*, in the operation of the property

and for improvements, supplies, and machinery $112,411.32 (Find. 58), and that the Industrial Mining and Guaranty Company paid to Lawler and Wells, in behalf of the Seven Stars Gold Mining Company, $112,399.96 (Find. 47). It further appears that they paid out as dividends $11,533.07 (Find. 60). These sums aggregate $236,344.35. This is the entire amount which the record shows that the Industrial Co. expended in this transaction *while acting as agent of the Seven Stars Co.* The amount received from the sale of stock by the Industrial Mining and Guaranty Company was $252,308.97 from guaranteed stock and $2,583.80 from common stock (finding 54, Transcript, 366). Thus it appears that the amount received from appellants was $18,448.42 more than the amount expended by the Industrial Company in the operation of the property and in remittances to Lawler and Wells.

Counsel argued at the bar that it was impossible to distinguish between the moneys paid direct to Lawler and Wells and the moneys expended in operating the property. It is unnecessary to so distinguish. It is clear that Lawler and Wells should repay the amount which they received direct from the Industrial Company, namely, $112,399.96 (finding 47), and the amount which they received from the Seven Stars Gold Mining Company, namely, $47,812.25 (finding 46), as the result of its operation of the property while the funds of the appellants were being used in defraying the total expense of such operation.

*The findings are explicitly to the effect that from the moment sales of stock began it was the money of appellants that was being used in this transaction.*

The court finds on May 20, 1893, Lawler received notice

in writing that remittances on account of the Cowland contract were being made from money derived from the sale of the stock of the Seven Stars Gold Mining Company (Find. 26). The ingenious effort of counsel to evade the effect of this finding did not, we believe, impress the court. It is a plain statement that remittances were being made to Lawler and Wells from money derived from the sale of stock of the Seven Stars Gold Mining Company, and that Lawler at this time received "notice in writing" to that effect.

But elsewhere the court finds that the Seven Stars Gold Mining Company had "no source of income other than the sale of its stock" (finding 28, Transcript, 321), and at another point it is found that all remittances to Lawler and Wells after November 1, 1892, "were placed to the credit of the Seven Stars Gold Mining Company" (Find. 30). The finding that the only funds that went into the treasury of the Seven Stars Gold Mining Company were derived from the sale of stock, coupled with the finding that out of its treasury $112,399.96 were paid to Lawler and Wells, are equivalent to the direct finding that that sum of $112,399.96 was paid Lawler and Wells from the moneys of these appellants. The same is true as to the $112,411.32 paid for operating the property by the Seven Stars Gold Mining Co.

But counsel made the assertion in oral argument that the record shows that after May 20, 1893, the Industrial Company borrowed $43,700 *and used it in this transaction.* There is no basis in the findings for such an assertion. It is true that the court did find that after May 11, 1893, the Industrial Mining and Guaranty Company borrowed that sum

of money (Find. 49), but it does not find that any part of that money was received by the Seven Stars Gold Mining Company or used in the business of the Seven Stars Gold Mining Company; but, on the contrary, such a construction is negatived by the express finding that the Seven Stars Gold Mining Company had no source of income other than the sale of its stock.

Furthermore, as we have seen, the legal presumption is that the Industrial Company, as agent, having received $252,308.97 belonging to its principal, used the funds of its principal in making the disbursements in the business of the principal.

Counsel failed to observe that from May 20, 1893, up to the date of the forfeiture, namely, September 10, 1893, the Industrial Mining and Guaranty Company, as the agent of the Seven Stars Gold Mining Company, was defraying the entire expense of the operation of the mines, and that this was being done while John Lawler was the superintendent of the property. Having no other source of income other than the sale of its stock, necessarily the expenses of that operation were met from that source, and Lawler was therefore using the funds of these appellants, *and knowingly using the funds of these appellants*, to operate the mines during this period, and he and Wells were receiving the proceeds. On June 6, 1893, Lawler and Wells received from this source $2,355.37.

*Counsel reiterate in argument that Warner was a man of wealth, and upon him Lawler and Wells always relied for their payments.* There is no finding touching the wealth of Warner, but the record does show that during the progress of this transaction he made an assignment for the ben-

efit of his creditors. It further shows that Warner did not pay a dollar to Lawler and Wells after May 24, 1892 (finding 47, transcript, 324). On the contrary, the plain facts are that Warner told Lawler and Wells at the inception of the transaction (finding 6) of his purpose to organize this corporation, and they were fully advised of its organization (finding 20) and of the public promotion of the property (finding 37), and it was from the sale of stock and from no other source (finding 28) that all payments to Lawler and Wells during a period of nearly a year were being made, and all these payments were placed to the credit of the Seven Stars Gold Mining Company (finding 30). It also appears that when Warner asked Lawler and Wells for the first extension (finding 21) he suggested "*that he was unable to place securities*," as the findings word it, in time to meet that portion of the purchase price falling due November 12, 1892 (finding 21), and the second extension was granted after Warner had become utterly unable to pay anything (finding 23). At that critical time Lawler took a hand in the business as manager, and, being manager, they elected him *a* director, and he and Wells stipulated that payments could be made for a certain time in monthly installments of $4,500 (finding 23), but the panic of 1893 being on, sales of stock stopped, and even these small monthly payments were impossible, and Lawler as manager, attempting to operate the property, and he and Wells as vendors, looked in vain to the empty treasury of the Seven Stars Gold Mining Company.

Some time before an official of the Seven Stars Gold Mining Company wrote Lawler (this being letter referred to by Mr. Scarritt in oral argument and the basis of finding 26) that he had left no stone unturned to raise money to cancel

the obligations of the Cowland contract, but he was handicapped by the stringency in the money market, which had made "his efforts to place the stock of the Seven Stars Gold Mining Company very difficult."

## III.

As suggested in oral argument, finding 26 was made by the supreme court of Arizona after it had decided the case, as well as findings 27, 28, and the second paragraph in finding 30, and that therefore the decision of that court rests upon a false premise.

The supreme court of Arizona in its opinion does not discuss this distinct prayer of the appellants for a money decree upon the theory of a constructive trust. After disposing of the claim of an estoppel, the court said:

"The disposition of the questions above determined will render unnecessary a consideration of the third and fourth assignments, as they refer simply to the alternate prayer for relief in the complaint based upon the same allegations of fraud and misrepresentation upon which the error alleged in the first assignment was predicated."

This confusion of the grounds for a money decree with the grounds upon which we assert an estoppel, and the denial of one because the other is denied, is, as we have seen, manifestly fallacious.

## IV.

In view of the pointed inquiries of the court during oral argument, we deem it important to call to the attention of your honors the late case of Holly *vs.* Missionary Society, 180 U. S., 284—opinion by Mr. Justice Shiras.

The language of that opinion is in complete harmony with the authorities we have cited, that the burden is upon him who asserts the right to retain funds gotten by another through fraud or felony to show he received them for value and without notice; but that case goes further and, in accordance with the rule announced in Perry on Trusts, section 219, holds that that burden can be met only by showing (1) absence of actual knowledge, and (2) absence of circumstances that would suggest to an ordinarily prudent man inquiry as to the source of the funds.

It is sufficient to destroy the defense that the party receiving the funds "had reason to believe" (page 289) that they had been obtained by fraud. If the party received the funds "in circumstances that visited him with notice," it is enough. In that case the defendant had no knowledge whatsoever of the transactions in which the fraud was committed (page 291), and relief was denied because the court was able to affirmatively find he "acted without any notice or knowledge, actual or imputable."

This honorable court has also held that before the party can retain the funds he must show he gave credit on the faith of them.

Wilson *vs.* Smith, 3 How., 763.

See also:

U. S. *vs.* State Bank, 96 U. S., 30.

It is difficult to see how appellees gave credit on the faith of the funds of appellants. The option was granted May 12, 1892.

## V.

*But the contention of the learned counsel that this record does not affirmatively show that Lawler and Wells knew the contents of the prospectus distributed in America or of the map distributed in America and England is not in accord with a reasonable interpretation of the findings.*

We shall answer this contention upon the hypothesis that the burden was upon appellants to show knowledge.

We do not understand that this court is bound by the interpretation which the supreme court of Arizona gave in its opinion to the findings of fact. The findings, with the exception of four, as heretofore suggested, were made by the district court and adopted by the supreme court, and that court, we believe, erred not only in misapplying the law, but in misinterpreting the plain wording of the findings of fact. This honorable court will consider and interpret the findings irrespective of the opinion of the supreme court of Arizona, and will give to the findings of record not a narrow, literal, or technical construction, but the fair and reasonable interpretation and the meaning and scope to which, after a thorough consideration in the light of the entire record, they may seem entitled.

In this cause, especially, we submit that the findings should not be given a strict construction as against appellants, *because they were drafted and proffered by appellees.* The court will observe from the record that every finding suggested by appellants was rejected (Trans., 207–221).

Finding 20 is that John Lawler was in the office of the Industrial Mining and Guaranty Company on August 30, 1892,

and on September 3, 1892, and between those days, and that while there he became aware that there was in course of preparation a prospectus based upon the property of himself and Wells, and describing that property, and that the reports, milling and smelting returns, and other data furnished by himself and Wells were going into the prospectus.

In absence of any other finding, we contend that the plain import of these words is that Lawler then learned the contents of the document that was to be distributed as a prospectus. The court explicitly says that he personally knew the facts and statements furnished by himself and Wells were a part of the proposed prospectus, and certainly he could not know this much and be in ignorance of the contents. It will be perceived from an examination of the prospectus that the facts and statements mentioned in this finding appear in all parts of the prospectus, and, together with the assertions of ownership and advantages of investment, constitute the entire prospectus. How Lawler obtained his knowledge the finding does not disclose. It is not found that some one told Lawler that "the facts and statements" were being used for the purpose of a prospectus. It says he *became aware*—he personally learned that fact while there in the office, where and while the work was being done. The ultimate and essential fact is that Lawler did obtain this actual and personal knowledge, and the natural and ordinary means of obtaining it was to read or hear read the manuscript for the prospectus. A finding that a person had personal and actual knowledge that certain "facts and statements" which appear at every point in a certain document

were in that document is clearly equivalent to a direct finding that he knew its contents.

But further note the language of finding 20. It says that Lawler, while there in the office of the company, became aware that the facts and statements furnished by himself and Wells were "*being used*" in the preparation of the prospectus. Thus he was present when the actual work of preparing the prospectus was being done, and he knew what was being done in preparing it—that is, in arranging and determining its contents, and not a part, but all of its contents. He could not know less than this and still have actual, personal knowledge that the facts and statements furnished by him as used in this prospectus as it appears in this record were so used. Lawler could not have seen even the caption of the document (Transcript, 18) without knowing that the public were to be invited to purchase stock in the Seven Stars Gold Mining Company upon the basis of its ownership of his property.

But let us pass now to finding 37. It reads that Lawler and Wells, "in the month of October, 1892, became aware that *the American prospectus, Exhibit D*, to the original complaint was being distributed by the Industrial Mining and Guaranty Company." Note that the court does not find that Lawler and Wells became aware that *a* prospectus or that *some* prospectus was being distributed. We contend that there can be but one interpretation of the finding, not that Lawler and Wells heard of the circulation of a prospectus without knowing anything of what it contained, but *that they knew that this particular document attached to the complaint was in course of distribution*. The court does not find how Lawler and Wells personally learned that it was that par-

ticular prospectus, but the natural result of the finding must be that they had examined it, for how else could such personal, actual knowledge be obtained? *Clearly it was the intention of the court to state the ultimate and essential fact of knowledge without finding the probative facts as to how the knowledge was obtained.*

But we ask your honors to consider, in connection with findings 20 and 37, finding 43. This finding the learned counsel did not discuss. It reads:

"That the subscribers to the stock of the Seven Stars Gold Mining Company did not at the time of their individual subscriptions to, or at the time of their several payments for said stock, have any knowledge or notice *of any of the following matters:*

* * * * * * *

"(*d.*) That said defendants knew that *said prospectuses and maps* were being distributed."

Elsewhere (Find. 14, Trans., 318) the court finds that the map distributed was Exhibit C, attached to the original complaint, which appears at Transcript, page 24. That map as distributed contained the words "Map of the group of mines belonging to the Seven Stars Gold Mining Company," and the court expressly finds that appellees knew of the distribution of *said map.* Clearly the printed words identifying the mines are as much a part of the map as the printed lines delineating the various claims and their divisions. Here, then, is an express and unequivocal finding that Lawler and Wells knew of the circulation of the representation that the Seven Stars Gold Mining Company was the owner of these mines.

We submit that it is not a proper conclusion that the District Court intended to state that Lawler and Wells had simply heard of the circulation of *a* prospectus and *a* map, and of their contents they knew nothing. If such was the intention of the court, all doubt or ambiguity could easily have been removed by stating expressly that Lawler and Wells did not know of the contents. Clearly the court could not have ignorance of the contents in mind when it said that they knew of the circulation of *this prospectus* and *said map*.

In finding 16 the court explicitly states, in reference to the English prospectus, that Lawler and Wells had no "knowledge or notice of *its contents* until some time in the month of October, 1893."

If the court had in mind that Lawler and Wells were in ignorance of the contents of the American prospectus, would it not have made the same statement touching it?

It was asked by his honor, Justice White, during the course of argument, that if we requested the court to find that Lawler and Wells received copies of the prospectus and map, and that no such finding was made, is not that equivalent to a finding that they did not receive such prospectus or map? That inference we believe does not follow. The court found ultimate facts. The ultimate fact of *knowledge* is in finding 37. The receipt of copies was a mere probative fact tending to show the ultimate fact of knowledge, and the court therefore refused to insert the finding of receipt of copies.

That this thought was in the mind of the supreme court of Arizona is shown by its opinion (Transcript, 284). It says:

"That it is only the ultimate facts which the court is bound to find, and that this court will not take notice of a refusal to find the mere incidental facts which only amount to evidence from which the ultimate fact is to be obtained."

We asked the district court to include in its findings facts stated in submission of findings 9 to 19 (Transcript, 211 to 221), and it refused so to do, and the supreme court affirmed such refusal, saying they were "a number of evidentiary facts." Among such facts which we asked the court to incorporate in its findings were the following (Trans., 212): First, that Lawler was consulted freely by Warner and the men who worked for Warner and the clerks and officers of the Seven Stars Gold Mining Company in regard to the statements in the prospectus then being completed; second, completed prospectuses in the proof-sheets were read over to Lawler in the office of the Seven Stars Gold Mining Company, and he stated he was well pleased with them; third, that Lawler also saw the completed map made to accompany the prospectus; fourth, at the request of Lawler fifty copies of the American prospectus were sent to him at Prescott, Arizona; fifth, that the defendant Wells received a copy of the American prospectus in the course of its distribution; sixth, that Lawler had a copy of the prospectus in his possession in October, 1902, and also saw a verbatim copy in the New York *Herald*; seventh, that about October, 1892, Lawler read in a local paper at Prescott a criticism of Warner's scheme to float the property, and also a criticism in the New York *Herald*, and also read in the *Engineering and Mining Journal* of September, 1902, an article criticising Warner's method in floating the property; eighth, that copies of the American

prospectus were sent to the bank of Arizona, of which the defendant Wells was formerly the vice-president and director, and in which at this time he was a large stockholder and in the offices of which he had his desk, said copies being sent upon the following correspondence:

"PRESCOTT, ARIZONA, *Oct.* 11, '92.

"W. M. EARL, Esq.,

"*Treasurer, No.* 41 *Broadway, N. Y.*

"DEAR SIR: We acknowledge receipt of your telegram of the 10th inst. advising us of the fact that you had mailed us check for $5,000.

"We are paying all Hillside checks upon presentation, but have said nothing to Mr. Rickard about the guarantee you gave us.

"If he seems solicitous about the account this will explain.

"*Will you kindly send us a few of the prospectuses of the Seven Stars Mining Co.?*

"Yours very truly,

"W. E. HAZELTINE, *Cashier.*"

Hazeltine was the cashier of the Bank of Arizona mentioned in the agreements hereinbefore set out.

Earl, the treasurer of the Industrial Co., in reply wrote:

"With regard to your request for a few prospectuses of the Seven Stars Gold Mining Company, we expect some additional copies from the company within two or three days, when we will take pleasure in forwarding the same to you."

We also pointed out to the supreme court the testimony of the appellee Wells to the effect that he had received a copy of the American prospectus, map, and blank subscription form through the mails in the course of their distribution (submitted finding 47, Transcript, 252).

All the foregoing facts the district and supreme court refused to incorporate in the findings. Touching them the supreme court said (Trans., 290):

"The ninth to nineteenth findings, inclusive, request the finding *of a number of evidentiary facts, some of which were elsewhere found by the court,* some of which were adversely found on conflicting evidence, some of which were not shown by any evidence appearing in the record, *and many of which were not material but were simply incidental facts, which only amount to evidence from which the ultimate fact might be deduced.*"

We believe that these proceedings assist in the construction of finding 37, and show that it was the intention of the district court to there state the ultimate fact of knowledge by Lawler and Wells of what the prospectus represented, and it refused to find *the receipt of the prospectus and map* and *the examination of the prospectus and map* because they were probative facts.

As a further aid in the interpretation of these findings we deem it proper that the court consider the motion for a new trial drafted by the same counsel who drafted the findings which the district judge signed. (Motion for a new trial, Transcript, 168–190.)

It will be seen that in that motion for a new trial, which is a most careful and exhaustive review of the facts in the case (and no evidence was introduced after that motion was filed) while it is asserted that Lawler and Wells did not know of the contents of the English prospectus (Transcript, 178, A 2) it is nowhere denied that Lawler and Wells knew the contents of the American prospectus, but the claim is made throughout that motion that there is no false or fraud-

ulent statement contained in the American prospectus. It is said (Transcript, 184):

"Because the evidence shows that no one or more of the stockholders knew anything about the delivery of the Blauvelt maps, ore and smelter returns, or the visit of Lawler to New York, and the transactions there occurring, or the extensions of said Cowland contract, *or of the receipt by Lawler and Wells or the Bank of Arizona of any prospectus, or their knowledge of the distribution of said prospectus.*"

Our interpretation of finding 37 and the other findings to which we have referred as establishing the knowledge of Lawler and Wells of the character and contents of the prospectus and map is further sustained, we respectfully submit, by the conclusion of law attached to the findings of fact as made by the district court (Transcript, 274). That court concluded, as matter of law, that the purchasers of the capital stock of the Seven Stars Gold Mining Company were not authorized, from reading the prospectuses, maps, and blank applications distributed, to so construe the same as to believe or conclude therefrom that the legal title of the properties mentioned therein was vested in the Seven Stars Gold Mining Company, a conclusion from which we utterly dissent, but which goes to show the district judge considered the contents of the prospectus and map as a material consideration.

We beg to consider another inquiry by his honor Justice White while Mr. Scarritt was addressing the court. It was in respect to finding 19, the part thereof referred to being as follows:

"That the original Brodie map of which defendants' map, 'Exhibit A' in evidence is a true copy, had endorsed thereon the words, to wit: 'Plat of the Hillside and adjoining claims;'

and said quoted words were written upon the original draft of the distributed map, 'Exhibit C,' attached to the complaint; that afterwards, *without the knowledge of said Lawler, said quoted words were, before distribution*, changed on said map, 'Exhibit C,' to the words, to wit, 'Map of group of mines belonging to the Seven Star Gold Mining Company.'"

In the first place, it will be noted that this finding is limited to Lawler, and that it refers to the map and not to the prospectus, two separate and independent documents. In the second place, considering that finding in connection with the others, we believe that the court intended thereby to state that Lawler, while in New York, did not know of this change and did not know of it before distribution, and that it should not be read to limit the later express and explicit finding (finding 43, Transcript, 324), that Lawler knew of the distribution of the *said map* as it now appears in the record. The court found that before distribution the map had been changed (finding 19, Transcript, 320), and that the distributed map did contain the words, "Map of the group of mines belonging to the Seven Stars Gold Mining Company" (finding 14, Transcript, 318), and it is this map which was actually distributed in America and England (Find. 16) that is referred to in finding 43.

## VI.

The dividend referred to by counsel which was paid appellants was simply the return to them of a part of their money (finding 60). Evidently it was a means of keeping up the appearance of prosperity to delude people into investing. If appellants now asked for the return of the entire

$254,892.77 which they paid for stock, instead of the amount of $160,152.21 (former Brief for Appellants, p. 99) actually received by Lawler and Wells from out of their funds, then the payment of this dividend might be a material fact.

Counsel's effort to show that appellants acted as stockholders for a considerable time of the Seven Stars Gold Mining Company is wholly unsupported by the record. There was never a stockholders' meeting. No reports were ever made. No information was ever given out except the prospectus. The only time appellants as stockholders ever assembled was the meeting in Jersey City to authorize this suit (Find. 60), and within a reasonable time after the fraud was discovered this suit was authorized and instituted. Laches was never suggested as a defense.

## VII.

Counsel placed much stress upon the finding of Wiser's knowledge (Find. 39). Wiser is one stockholder out of five hundred (Find. 42). None of them could be affected or prejudiced by his knowledge. If so, all that would be necessary to protect such a fraud as is here shown would be to give notice to one purchaser of stock. If one stockholder is entitled to the estoppel, decree of title in company is proper.

Jones *vs.* Bolles, 9 Wall., 364.

In respect to the prayer for a money decree, the record shows exactly the amount paid by Wiser for stock.

The suggestion that the other appellants "were clerks or attorneys" of Wiser is not true. No one of them is asso-

ciated with Wiser in any capacity. If they are acquainted with him, their counsel do not know it. Wiser lives in Chicago (Trans., 57), and all appellants, save four, live in the East or in England (Trans., 57, 58) and are gentlemen of unquestioned integrity.

Language of the learned counsel seems to imply that it was something reprehensible for these buyers of stock to disturb Lawler and Wells in the enjoyment of the funds out of which they had been defrauded and to which Lawler and Wells have not the semblance of a *moral* right.

## VIII.

In respect to the inquiry of his honor Justice White, touching the receipt of $50,000 of stock in the Seven Stars Gold Mining Company by Lawler and Wells as an evidence of their innocence, we respectfully submit that, taken in connection with the other findings, *it is more of an evidence of their confidence in the successful outcome of the scheme of Warner and of their purpose to get from it the largest possible returns for themselves.* Before this time the prospectus had been bringing splendid results, and Lawler and Wells had received over two hundred thousand dollars.

If Warner was willing to represent title to the public in order to get funds to obtain title, they, as the recipients of the funds, were willing to let him do so and take the risk of his hazardous scheme coming out all right in the end. The supposition that Lawler and Wells were in ignorance of the processes of Warner as late as May 11, after their visits to the offices of the company in New York, after two extensions had been applied for, after Warner had failed, after

the prospectus to their knowledge was in circulation for months, after the Seven Stars Gold Mining Company had itself paid them over $100,000, and been operating the mines for six months, and Lawler was about to become its manager, is, without reference to the effect of findings 20, 37, and 43, as it seems to us, utterly impossible.

## IX.

Counsel's oral argument was chiefly a relation of facts, showing unrelinquished legal title of Lawler and Wells, all of which facts were concealed from appellants The argument as to constructive notice by registry of deeds is wholly inapplicable to this case, either on the theory of estoppel or of constructive trust, because appellants did not purchase into the title, and because, under all the authorities, those receiving a prospectus may implicitly rely upon its representations. See authorities in our former brief, pp. 63, 64, 91.

The doctrine of record notice can have no possible bearing on the case so far as it seeks a decree for the moneys out of which appellants were defrauded. No court has ever held that the presence of title on record excuses an express representation inconsistent with that record (see cases cited by counsel for appellee), and clearly, if appellants were defrauded by Warner, appellees cannot justify their retention of the fruits of that fraud by an appeal to their record title.

## X.

Counsel refer to the representations in the prospectus as *vague phrases*. But they are not phrases, but complete sentences; and they are not vague, but positive, unqualified, direct. The affirmations that *the titles are unquestionable*, and *the company owns* this timber land, and that the *property belongs* to the Seven Stars Gold Mining Company, and that every purchaser of stock will obtain an interest therein and will share in all the earnings of the mines; the description of the property throughout as the property of the company whose stock was offered; and the total concealment of any adverse lien or title, show, we are compelled to believe, a preconceived and cherished design to mislead. But if your honors should believe, as counsel argue, that careful consideration and reflection ought to have led appellants to doubt these statements, we ask you to read the language of Lord Hirschill in Bloomenthall *vs.* Ford, 66 L. J. Rep. (Ch.), wherein he speaks of misrepresentations in certificates of stock, as follows:

"I cannot myself think that where an unequivocal statement is made by one party to another of a particular fact the party who made that statement can get rid of the estoppel which arises from another man's acting upon it by saying that if the person to whom he made the statement had reflected and thought all about it he would have come to see that it could not be true. Of course, if the person to whom the statement was made did not believe it, and did not act on the belief induced by it, no doubt there is no estoppel. But supposing he did believe it, and did act on the belief induced by it, then it seems to me you do not get rid of the estoppel by saying, 'If you had thought more about

it you would have seen it was not true.' The very person who makes a statement of that sort has put the other party off making further enquiry. He has produced on his mind the impression that further enquiry would be unnecessary or useless. Therefore, I confess I do not think that it is legitimate to speculate what is the conclusion at which a man would have arrived if he had put together—pieced together—all the considerations that might have occurred to a reflective mind cogitating on the whole subject, and then to say that because he would have come to the conclusion that the statement made to him, could not have been true, he is not entitled to act upon it as if it had been true, when in point of fact he did not enter into those considerations, but did believe it and did act upon it."

## XI.

It was very many times suggested by the learned counsel for the appellees during his able argument that appellants were seeking to obtain title to a mine worth $450,000, for which only $231,000 had been paid. This skillful effort to keep in the foreground a supposed equity of appellees must prove ineffective, when it is considered that appellants specifically prayed that a decree be entered awarding them the moneys which they had paid for stock and which had been transmitted to Lawler and Wells, and if appellants are entitled to that relief the decree of dismissal must be reversed. The equity is all on the side of appellants. They received nothing for the $252,308.97 they paid. Lawler and Wells gave or suffered nothing for the $160,152.21 of that money which they received.

Contrast the escrow agreement and the prospectuses and the sober truth of Judge Truesdale's words appears:

"That these stockholders have been the innocent victims of an outrageous fraud, no one who has heard this testimony can for a moment doubt."

Lawler and Wells have in their hands the funds obtained by means of that fraud. A final determination of this controversy that they can keep such funds without *affirmative and clear showing* that they were received without any knowledge of the fraudulent means by which they were procured or of circumstances suggestive of inquiry to an ordinarily prudent and conscientious mind would stand without a precedent in equity.

Respectfully submitted.

G. W. KRETZINGER,
M. F. GALLAGHER,
*For Appellants.*

FILE COPY.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

Office Supreme Court U.
FILED
MAR 23 1903
JAMES H. McKENNEY,
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No. 174.

CLINTON B. WISER, C. M. FIELD, JOHN A. KERR, JAMES A. FERGUSON, DORSEY NEVILLE, MARY M. HEATH, JOHN J. MILLER, HENRY L. MUGSFORD, WILLIAM J. FOSTER, EDGAR G. MILLER, L. F. HOIRNE, SIDNEY G. LAW, EDWARD M. SMITH, HARPER M. SMITH, BENJAMIN GOODMAN, LESTER M. CROUCH, JOHN B. CLUTE, KATIE T. COURTNEY, H. S. ANDERS AND CECIL QUENTIN, *Appellants,*

*vs.*

JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD MINING COMPANY, INDUSTRIAL MINING & GUARANTY COMPANY, AND JOHN GRIFFIN, RECEIVER, *Appellees.*

Appeal from the Supreme Court of the Territory of Arizona.

## REPLY OF APPELLANTS TO THE SECOND BRIEF FOR APPELLEES.

G. W. KRETZINGER,
M. F. GALLAGHER,
SOLICITORS FOR APPELLANTS.

BARNARD & MILLER PRINT. CHICAGO.

IN THE

# Supreme Court of the United States,

OCTOBER TERM, A. D. 1902.

No. 174.

CLINTON B. WISER, C. M. FIELD, JOHN A. KERR, JAMES A. FERGUSON, DORSEY NEVILLE, MARY M. HEATH, JOHN J. MILLER, HENRY L. MUGSFORD, WILLIAM J. FOSTER, EDGAR G. MILLER, L. F. HOIRNE, SIDNEY G. LAW, EDWARD M. SMITH, HARPER M. SMITH, BENJAMIN GOODMAN, LESTER M. CROUCH, JOHN B. CLUTE, KATIE T. COURTNEY, H. S. ANDERS AND CECIL QUENTIN, *Appellants,*

*vs.*

JOHN LAWLER, ED. W. WELLS, SEVEN STARS GOLD MINING COMPANY, INDUSTRIAL MINING & GUARANTY COMPANY, AND JOHN GRIFFIN, RECEIVER, *Appellees.*

## REPLY OF APPELLANTS TO THE SECOND BRIEF FOR APPELLEES.

MAY IT PLEASE THIS HONORABLE COURT:

New matter appears in the second brief of the learned counsel for appellees to which we crave leave to make a short reply.

1. It is said that there was no contractual obligation on the part of the Seven Stars Gold Mining Company to pay anything to Lawler and Wells, and that it nowhere appears from the record that the Seven Stars Gold Mining Company paid a dollar of the money received by

Lawler and Wells on account of the price. *The obligation and the payor are immaterial, if funds realized from the sale of stock of the Seven Stars Gold Mining Company are substantially traceable to Lawler and Wells.*

2. But, in denying that any presumption arises upon this record that funds of the subscribers were used in paying Lawler and Wells, counsel fail to give weight to all of the pertinent facts. The Seven Stars Gold Mining Company was in possession of the mines on and after October 1, 1892, and, as expressly found, operated the mines from that date until August 17, 1893. (Finding, 30; Trans., 321.) During the time it was thus operating these mines the Seven Stars Gold Mining Company had no interest in any other property, and no source of income other than the sale of its stock. (Finding 28.) The only funds, therefore, which the Industrial Company received as the agent of the Seven Stars Gold Mining Company, were the funds of the subscribers to stock.

Now, if it is true, as suggested by counsel, that the Seven Stars Gold Mining Company was under no obligation to make payments direct to Lawler and Wells, it was clearly under an obligation *to pay the expenses of its own operation of these mines*, and it appears that these expenses were paid in its behalf up to the sum of $112,411.32, by the Industrial Mining and Guaranty Company. The presumption then clearly arises, as held in the many cases cited, that the funds used in discharging the obligation of the principal were the funds of the principal, which the agent had received. Out of the result of that operation Lawler and Wells received $47,812.25. (Finding, 46.)

Moreover, it is distinctly averred in the answer of Lawler and Wells that the gross proceeds of the opera-

tion of the property were paid to them by the Seven Stars Gold Mining Company. (Trans., 81.) It is expressly found that such gross proceeds amounted to $47,812.25. (Finding 46.) And it is further expressly found that all remittances to Lawler and Wells after November 1, 1892, were placed to the credit of the Seven Stars Gold Mining Company. (Finding 30.) It cannot be true then, as suggested by counsel, that it nowhere appears, "that the Gold Mining Company paid a dollar of the money received by Lawler and Wells on account of the price."

Futhermore, the last extension of time to make payments was negotiated by Warner, acting as president of the Seven Stars Gold Mining Company. (Answer of appellees, Trans., 80.)

3. As to the $112,399.96, paid direct by the Industrial Mining and Guaranty Company to Lawler and Wells, it is equally clear that the presumption arises, aside from the express finding, that the Industrial Company intended to, and did use, the funds of the subscribers in making these remittances.

The court expressly finds that the Industrial Company was the agent of the Seven Stars Gold Mining Company, and further finds, that it was engaged in "promoting" "the business transactions of the Seven Stars Gold Mining Company." (Finding 49.) Elsewhere the record shows that the Seven Stars Gold Mining Company was organized for the purpose of acquiring these properties "from Charles Cowland, *through the Industrial Mining and Guaranty Company.*" It is clear that the Industrial Company was a mere device whereby the property was to be acquired from Cowland, and paid for by the general sale of stock, and, while under its arrange-

ment with the Seven Stars Gold Mining Company, the Industrial Company was to pay for the mines, as counsel suggest, it was to do so merely as a promoting corporation and out of the proceeds of the sale of stock. Throughout the entire transaction it acted as an auxiliary corporation, and in the capacity of agent and promoter.

Counsel, referring to finding 30, points out that remittances to the Bank of Arizona, made by the Industrial Company, were placed to the credit of the Seven Stars Gold Mining Company. *This is the clearest proof that the intention was to use the funds of the Seven Stars Gold Mining Company in making such remittances.*

Not the technical status of the two corporations, nor upon whom lay the technical obligation to pay, nor the form in which payments were made; but are the funds of the subscribers, substantially traceable through the bank account of the Industrial Company to the operation of the mines and to Lawler and Wells, that is the decisive question.

It was all being done by Warner. He, manipulating both corporations, was carrying out this single and clearly defined plan of promotion, and when the sale of stock stopped the enterprise collapsed.

The contention that Warner, acting under the name of the Industrial Company, used funds derived from other sources in paying for the property, is utterly improbable, contradicted by the plain import of the transaction shown upon the record and in the face of an express finding. (Finding 26.)

6. Counsel say, that the Industrial Mining and Guaranty Company paid out $380,295.81 for purposes connected with this enterprise, "which was, doubtless, *chargeable as a debt against the Seven Stars Company.*"

Brief, page 2.) Is not this latter statement inconsistent with the contention that in making the payments to Lawler and Wells and in paying the expenses of the operation of the property, the Industrial Mining and Guaranty Company was using its own funds in discharging its own obligation?

But the fact that the Industrial Company expended in this entire transaction $380,295.81, does not preclude the necessary substantial tracing of the funds of appellants to Lawler and Wells. The first moneys came in from appellants September 28, 1892. During the eight months following that date the Industrial Company received $252,308.97 from the sale of guaranteed stock, and $2,583.80 from the sale of common stock. (Finding 54; Trans., 366.) During the same period it expended, in this transaction, $112,411.32, for operation and improvement of property, and $112,392.96 remittances to Lawler and Wells, the aggregate of which two sums is $18,448.42 less than the amount received from the subscribers.

*All of the moneys which appellants now seek to recover from Lawler and Wells were received by them after September 28, 1892, and during the period that the Industrial Company was receiving and disbursing the funds of the subscribers.*

The expenses incurred in the organization of the Seven Stars Gold Mining Company and in preparing, printing and distributing the prospectuses and for counsel fees, and other promotional expenses, is not shown; but such expenses would not rightly be chargeable to the Seven Stars Gold Mining Company, and it does not appear that they ever were so charged, or that any funds of the subscribers were wrongfully diverted to their payment.

7. Counsel limit their reply brief to the $131,859.52, realized from the American subscribers. We contend that the English subscribers are entitled to the same relief. That they were defrauded out of $125,852.33, is clear. The English prospectus was boldly false in its declarations (Trans., 29), and, therefore, the funds received by the Industrial Company from that source were impressed with the same trust, and are traceable to Lawler and Wells.

8. Counsel cite finding 50, which finds that Lawler and Wells had no knowledge that they were receiving the funds of the subscribers prior to the commencement of the suit. The effect of this finding of the District Court, is, of course, destroyed by the subsequent findings of the Supreme Court. Where a Supreme Court, upon reconsideration of the evidence, makes a new finding, as it did in this case, clearly that finding must overcome any inconsistent findings made by the District Court, and which had before been inadvertently adopted. The record shows that the opinion of the Supreme Court of Arizona was handed down November 9, 1900. On January 21, 1901, counsel for appellants appeared and moved the court to make the following findings, among others (Trans., 303):

1. Remittances to the Bank of Arizona for Lawler and Wells, after November 1, 1892, were placed to the credit of the Seven Stars Gold Mining Company.

2. On May 20, 1893, Lawler received notice in writing that remittances on account of the Cowland contract were being made from moneys derived from the sale of the stock of the Seven Stars Gold Mining Company.

3. Before July 25, 1892, Lawler had personal knowledge that persons were being induced orally to purchase

stock in the Seven Stars Gold Mining Company by representations as to the merits of the mining property in question.

4. The Seven Stars Gold Mining Company had no property other than its interest in said mines, and no source of income other than the sale of its stock.

These submissions of findings were argued by counsel January 21, 1901, and on March 23, following (Trans., 327), the Supreme Court found that the four acts, above suggested, were true, and added them to the findings that had been made by the District Court.

Respectfully submitted.

G. W. KRETZINGER,
M. F. GALLAGHER,
*For Appellants.*

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JAMES H. McKENNEY,
Clerk

IN THE

# SUPREME COURT

OF

# THE UNITED STATES

OCTOBER TERM, 1902.

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CLINTON B. WISER, ET AL,
*Appellants,*
*vs.*
JOHN LAWLER, ET AL,
*Respondents.*

No. ~~192~~ 174

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APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

---

## STATEMENT AND BRIEF

FOR RESPONDENTS LAWLER AND WELLS.

---

H. C. McDOUGAL,
W. C. SCARRITT,
*Counsel.*

E. L. SCARRITT,
*Of Counsel.*

(18,287)

EQUITABLE ESTOPPEL: ARE THE OWNERS OF MINES, WHOSE TITLE IS PROCLAIMED BY THE PUBLIC REGISTRY, TO BE DISPOSSESSED AND DEPRIVED OF THEIR PROPERTY BY REASON OF THEIR SILENCE AND INACTION UNDER THE CIRCUMSTANCES AND RELATED FACTS DISCLOSED BY THIS RECORD?

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IN THE

# SUPREME COURT

OF

# THE UNITED STATES

OCTOBER TERM, 1902.

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CLINTON B. WISER, ET AL,
*Appellants,*
*vs.*
JOHN LAWLER, ET AL,
*Respondents.*

No. 434.

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## STATEMENT.

This is a suit in equity instituted in the District Court of Yavapai County, Arizona. From an adverse decision in that court the plaintiffs appealed to the Supreme Court of the Territory, where the judgment of the District Court was affirmed. A motion for a rehearing was made by them and denied. Upon their motion, the Supreme Court of the Territory made Findings of Fact, sixty-four in number, which are printed as an appendix to this brief. No errors in the admission or rejection of evidence have been excepted to by appellants or certified to this court by the court below.

The following admirable narrative of the facts of this case, which we adopt as our statement, is taken from the opinion of the Supreme Court of the Territory, by Doan, J. (Record p. 274)

"On and prior to the 12th day of May, 1892, John Lawler and Ed. W. Wells were the owners and in possession of the mines and mining claims located in the Eureka mining district in Yavapai County, Arizona, known as Hillside, Happy Jack, Contact No. 1, Contact No. 2, and Camp, and locations known as Midnight, Morning Glory, Water, Hidden Treasure, Sucker, Side, Purple Rose, Southern Belle, Robert E. Lee, Lucky Cuss, Centipede, and Good Enough, which are hereby denominated and will be hereinafter referred to as the "Hillside group of mines." The muniments of title showing such ownership in Lawler and Wells were then, and have been ever since, on record in the office of the recorder of said county of Yavapai, Territory of Arizona, where said mines are situate.

Lawler and Wells offered said mines for sale at the purchase price of $450,000 cash. A few days prior to May 12th, 1892, H. H. Warner visited this group of mines with T. A. Rickard, a mining expert, and examined the same. After such examination he contracted for the purchase of said group from Lawler and Wells for the sum of $450,000, paying $20,000 in cash, the remainder payable in installments, in accordance with the terms of an escrow agreement entered into on May 12, 1892, by and between John Lawler and Ed. W. Wells on the one part and Charles Cowland on the other part, which provided, among other things, that—

"The deed conveying the mine to Cowland be annexed to said agreement, and shall be held in escrow with the bank of Arizona, at Prescott, Arizona, to be held and delivered by the bank upon the following conditions only: The bank to deliver the deed to Cowland, his heirs or assigns, upon his or their paying or causing to be paid, as herein provided for, the full sum of $450,000. In case of failure of said Cowland in making, or causing to be made, any of said payments of money at the time or times and in the manner herein stated, then the said Bank of Arizona, upon demand being made thereupon by said Lawler and Wells, shall deliver said deed to Lawler and Wells, or their representatives; and, in the event of such failure of said Cowland to make or cause to be made any of the said payments, then all payments of money theretofore made by said Cowland on the purchase price of said property shall be forfeited by him and he agrees and covenants with said Lawler and Wells that all money paid by him as purchase money on said property shall belong to them, and be retained by them as liquidated damages accruing to them for the failure of said Cowland to purchase, take, and pay for said property as hereinabove stated and stipulated, and the said Lawler and Wells shall be at once released and discharged from any further duty or obligation to sell and convey the property.

"It is further agreed that said Cowland, by himself and his agents, may at once enter into and upon said property, and take possession thereof, subject however, to the legal possession of said Lawler and Wells; and the said Cowland may use, possess, explore, develop, work, and operate the said property; and all the proceeds derived from such use, development, operation, and working of the same, and from the ores taken therefrom shall be at once paid to said Lawler and Wells, and be applied to and credited upon the payment hereinabove stipulated to be made by said Cowland. It is further agreed that said Lawler and Wells shall retain and remain in possession of said property until the full payment of purchase price shall be made and Cowland recognizes and agrees to such possession, and any and all use made of, by, or on the part of the said Cowland shall be considered of said Lawler and Wells' possession as aforesaid. Lawler and Wells shall not work the said property, or operate the said mine, nor interfere with the use, working, and operation of said Cowland.

"It is further agreed that if the said Cowland shall fail to make the payments as above stated, and shall fail to take and pay for said property as above stated, that all improvements made on said property and all development made thereon and therein, and all ores taken therefrom, shall be the property of said Lawler and Wells, and shall not be removed by said Cowland, and the costs and expenses thereof shall in no manner be charged against said Lawler and Wells or against said property; that said Cowland shall have the right to work and operate the machinery and to use the property mentioned in said deed during the continuance of said contract and until the forfeiture thereof on his part; and in case of a forfeiture of contract on the part of said Cowland by failure to comply with any of the provisions thereof, or to make any payment as herein provided, then he agrees to at once surrender and deliver possession of said property to said Lawler and Wells."

On the 12th day of May, 1892, and contemporaneously with the execution of said agreement, a deed to the said Charles Cowland was executed by John Lawler and Ed. W. Wells and wife, particularly describing the said Hillside group of mines, and conveying the same to Cowland for the purchase price of $450,000. Contemporaneously with the signing of said agreement and deed, the said H. H. Warner signed an instrument in writing, guarantying that the said Charles Cowland will carry out and perform the conditions of said agreement above referred to. Afterwards, and on the same day, the agreement, deed, and instrument of guaranty were by the said Warner, John Lawler, and Ed. W. Wells deposited with the

Bank of Arizona at Prescott, as the escrow holder thereof, in accordance with the terms, conditions, and provisions contained in said escrow agreement. While the escrow agreement and deed were executed in the name of Charles Cowland, the said Cowland was the agent of H. H. Warner, and Warner was the real party in interest in the transaction. The escrow agreement, deed, and guaranty were never recorded, but remained in the possession of the bank, as the escrow holder thereof, until November 10, 1893.

About the 15th day of May, 1892, Lawler delivered to T. A. Rickard, as the agent of Cowland, the occupation of the said group of mines under the terms and conditions of the license contained in the escrow agreement, and the mines were operated until June 15th by and at the expense of the H. H. Warner Investment Company.

On the 14th day of June the said H. H. Warner, Charles Cowland, W. M. Earl, W. R. Kennard, and Frank B. Bowen organized and incorporated under the laws of New Jersey the Industrial Mining and Guaranty Company, with a capital of $500,000, for the purpose of handling mines and industrial enterprises, buying and selling stocks, etc.; and on the 15th day of June, 1892, said Charles Cowland transferred to the said Industrial Company his interest in the mining property involved in this suit for the purpose of handling, operating, and offering the same to the public, giving at that time to the said Industrial Mining and Guaranty Company a written assignment of all his right to said escrow agreement, and a deed to his interest in and to the said agreement between him and the said Lawler and Wells, together with his right, title, and interest in the property described therein, reciting the deposit in escrow of the said agreement and the accompanying deed of date of May 12, 1892, and stating that the Industrial Company is to have the same right as Cowland under said deed and agreement, and is made the agent of Cowland to perform the conditions and provisions of the agreement, and upon such performance to receive the deed. H. H. Warner, on said June 15th, made and delivered to the Industrial Mining and Guaranty Company his written consent to the making of said assignment and deed by Cowland. The Industrial Mining and Guaranty Company then, by resolution of the board of directors, assumed all the covenants, conditions, and agreements in the said escrow agreement of May 12, 1892, and promised to carry out and perform all the terms, conditions, and covenants contained therein on the part of Cowland, and to make the payment for said mines and mining property as provided for in the said escrow agreement. On the 15th day of June, 1892, T. A. Rickard delivered to the Industrial Mining and Guaranty Company the

occupation of said group of mines, and the company thereupon entered into such occupancy, and remained therein until the 1st day of October, 1892.

On the 15th day of August, 1892, said H. H. Warner, W. M. Earl, and one R. S. Hudspeth incorporated the Seven Stars Gold Mining Company, under the laws of New Jersey, with a capital of $3,000,000, the object and purpose of said corporation being to hold, operate, and convey mines. The said H. H. Warner was the president of the Industrial Mining and Guaranty Company, and was also a director in and president of the Seven Stars Gold Mining Company.

On September 10, 1892, the Industrial Mining and Guaranty Company, through its board of directors, offered to sell and convey all its right, title, and interest in the following mining properties, a portion of which are described in the escrow agreement and deed, to-wit, the "Seven Stars," "Happy Jack," "Contact No. 1," "Contact No. 2" mines, and the claim known as "Camp," and the locations known as "Mescal," "Elwood," "Midnight," "Waterfall," and "Boulder," to a company formed, or to be formed, and known as the Seven Stars Gold Mining Company, upon said company showing that it had placed $200,000 for working capital in its treasury, and upon receiving $2,800,000 in cash or stock in the Seven Stars Gold Mining Company.

On the 1st day of October, 1892, the Industrial Mining and Guaranty Company placed the Seven Stars Gold Mining Company in occupation of the Hillside group of mines, and said latter company thereupon entered into such occupancy under the terms, conditions, and provisions contained in the escrow agreement of May 12, 1892, by the authority of the resolution of the board of directors of the Industrial Mining and Guaranty Company, just quoted.

The Industrial Mining and Guaranty Company as the agent of the Seven Stars Gold Mining Company, under date of September 24, 1892, issued a prospectus, known as the "American Prospectus," to promote the sale of the stock of the Seven Stars Gold Mining Company, and circulated the same extensively throughout the United States. The circulation began about the 20th day of September, 1892.

On October 3rd, 1892, the Industrial Mining and Guaranty Company, as agent for the Seven Stars Gold Mining Company, authorized and directed an English prospectus to be issued, but such prospectus was not in fact ever issued or circulated in England or elsewhere. A prospectus was issued and circulated in England without the authority

of the Industrial Mining and Guaranty Company or the Seven Stars Gold Mining Company. Such prospectus was prepared, supervised and circulated by Charles Cowland. The descriptive matter in the prospectus was based upon data furnished by the officers of the Industrial Mining and Guaranty Company. The circulation commenced about October 5, 1892, and amounted to 80,000 copies.

On the 15th day of May, 1892, at the Hillside mines, Lawler and Wells delivered to T. A. Rickard a report previously made upon said mines, known as the "Blauvelt Report," together with a map of the underground workings of said mines, as such workings then existed, known as the "Blauvelt Map;" also copies of smelter and milling returns of ore which had been previously shipped from said mines and reduced, and known as "smelter returns." On September 28, 1892, at the request of H. H. Warner, Lawler sent by express to Warner, in New York City, the original of said smelting and milling returns.

On August 27, 1892, Ed. W. Wells visited the office of the Industrial Mining and Guaranty Company in New York City, and had an interview with H. H. Warner, president of that company and of the Seven Stars Gold Mining Company. On the 30th day of August, and between that day and September 3, 1892, John Lawler was in the office of the Industrial Mining and Guaranty Company in New York City, and learned that the American prospectus was being prepared for circulation for the purpose of promoting the sale of the stock of the Seven Stars Gold Mining Company, and also became aware that the Blauvelt reports and map and copies of the smelter returns were being used as a basis of description of the Hillside group of mines to be contained in the proposed prospectus.

On October 28, 1892, H. H. Warner, in Prescott, represented to Lawler and Wells that he was unable to place securities that he held in time to meet the payment of that portion of the purchase price falling due November 12, 1892; and, relying upon said representations, on request of Warner, Lawler and Wells, on October 28, 1892, agreed to an extension of the time of payment under the agreement of May 12, 1892, and provided that the original agreement remain in full force except as to said modification touching the time of payment.

On May 8th, 1893, Warner made a general assignment of his property for the benefit of his creditors, and on May 11th, 1893, Lawler and Wells, knowing of the assignment of Warner, executed an agreement with Charles

Cowland, stipulating that the payment mentioned in the original escrow agreement as falling due on May 12, 1893, may be made by said Cowland as follows: $9,098 in cash, and $4,500 to be paid on the 1st day of June, 1893, and the like sum to be paid on the 1st day of each of the following months, viz.: July, August, September, October and November. A part of the consideration for the agreement for the extension of the time of payment was the issuance and delivery to Lawler and Wells of $50,000, par value, of the guaranteed capital stock of the Seven Stars Gold Mining Company, and the appointment of John Lawler manager of operation of the Hillside group of mines; and John Lawler, on May 13, 1893, entered upon his duties as such manager.

On the 18th day of August, 1893, the chancery court of New Jersey appointed John Griffin receiver of the Industrial Mining and Guaranty Company, and the said John Griffin qualified and entered upon his duties as receiver that day.

The Seven Stars Gold Mining Company, from October 1, 1892, until August 17, 1893, continued to occupy and operate the Hillside group of mines under and by virtue of the occupation thereof so given to it by the Industrial Mining and Guaranty Company under the terms, conditions, and provisions contained in the escrow agreement of May 12, 1892.

On September 1st, 1893, neither Charles Cowland, nor the said recevier, nor the plaintiffs, nor any one of them, paid or offered to pay to Lawler and Wells the sum of $4,500, payable on that day, according to the terms and conditions of the aforesaid escrow agreement and modifications thereof; nor has Cowland, nor has any one for him, paid said sum since said date; nor has Cowland, or any one for him, paid or caused to be paid any portion of any purchase money of said property falling due or payable on or after the 1st day of September, 1893, according to the terms and conditions of said escrow agreement of May 12, 1892.

On the 10th day of September, 1893, Lawler and Wells, as owners of the legal title of the said Hillside group of mines, and claiming to exercise their rights under the escrow agreement of May 12th, 1892, entered into possession of said Hillside group of mines, and from thenceforward until September 30th, 1897, continued to remain in possession of said mines.

On the 10th day of November, 1893, the Bank of Arizona, as escrow holder of the escrow agreement and deed dated May 12, 1892, at the request of Lawler and Wells, redelivered said deed,

according to the terms of the escrow agreement, to the said Lawler and Wells.

From the gross proceeds of operation of the mines by the Industrial Mining and Guaranty Company there was deposited in the bank of Arizona, to the credit of Lawler and Wells, on account of the purchase price, in accordance with the escrow agreement of May 12, 1892, the sum of $19,987.61. During the operation of said property by the Seven Stars Gold Mining Company, a like deposit was made for the same purpose, amounting to $47,812.25, aggregating the sum of $67,799.86. On May 12 and 24, 1892, H. H. Warner paid Lawler and Wells, on account of the purchase price of said property, the sum of $51,000, and there was paid on and between November 12, 1892, and August 4, 1893, to Lawler and Wells, on account of the purchase price of said property, under the terms of the escrow agreement, various sums, aggregating the amount of $112,339.96.

During the life of the Industrial Mining and Guaranty Company it was engaged in promoting sundry mining, railroad, and industrial enterprises, including the business transactions of the Seven Stars Gold Mining Company. During that time it received and disbursed the sum of $824,142.13. From June 15, 1892, to and including August 1, 1893, the moneys which it received and disbursed on account of its various enterprises were all deposited in its name in a common fund in the Continental National Bank of New York City, and checked against, used, and disbursed by it in its various enterprises as required therein, excepting the sum of $111,724.23, of which sum $67,799.86 were the gross proceeds of the ore from the Hillside group of mines, and the further sum of $43,924.37, which is composed of $224.37, money received prior to May 11, 1893, from the sale of the Seven Stars Gold Mining Company stock, and the remainder from loans obtained by said company subsequent to May 11, 1893. Lawler and Wells did not at any time prior to the commencement of this action have any knowledge or notice that any money received by them on account of the purchase price of the Hillside group of mines, as provided for in the escrow agreement of May 12, 1892, came from the money or was any part of the money which any one or more of the purchasers of the stock of the Seven Stars Gold Mining Company had paid into the Industrial Mining and Guaranty Company on account of the purchase price of said stock.

Lawler and Wells were not the promoters of, nor in any wise interested in, the organization of the Industrial Mining and Guaranty Company, nor the Seven Stars Gold Mining Company, nor in the issuance or circulation of the prospectus, nor in the issuance or sale of the capital stock of either of said companies, nor in the proceeds thereof. After the 11th day of May, 1893, the Industrial Mining and Guaranty Company received the sum of $500, and no more, from the sale of the stock of the Seven Stars Gold Mining Company. The amount received by the Industrial Mining and Guaranty Company from the sale of the guaranteed stock of the Seven Stars Gold Mining Company aggregated $253,128.05, of which sum $819.08 was returned to the subscribers, and the stock canceled, making the amount of money retained by the Industrial Mining and Guaranty Company from the sale of guaranteed stock $252,308.97. There was received from the sale of common stock of the Seven Stars Gold Mining Company $2,583.89. The Seven Stars Gold Mining Company did not keep any books of account of receipts and expenditures of money in the New York office, but all the receipts and expenditures of money on account of the operation and expenditures of the Industrial Mining and Guaranty Company and the Seven Stars Gold Mining Company during their respective operation of the Hillside group of mines were kept by the Industrial Mining and Guaranty Company in its own books of account.

The Industrial Mining and Guaranty Company, between the 15th day of June, 1892, and the 18th day of September, 1893, paid out for the operating expenses and purchase of machinery and purchase price of the Hillside group of mines, dividends, and other expenses, the aggregate sum of $380,259.81, which amounted to $127,986.84 more than the amount of money received by it from the sale of the Seven Stars stock, and $60,186.98 more than the aggregate amount of money received by it from the sale of stock and from the net proceeds of ore from the Hillside group of mines. During the operation of the said Hillside group of mines by the Seven Stars Gold Mining Company there was expended by the Industrial Mining and Guaranty Company for costs of operation, improvements, supplies, and machinery the sum of $112,411.32. On and between January 13, 1893, and May 10, 1893, the Industrial Mining and Guaranty Company paid out for dividends on stock sold of the Seven Stars Gold Mining Company the sum of $11,533.07 to holders of stock of the Seven Stars Gold Mining Company.

The holders of stock of the Seven Stars Gold Mining Company did not, nor did any of them, before the commencement of this suit, return or offer to return to the Seven Stars Gold Mining Company his stock, or any part thereof. Neither said stockholders, nor any one of them, prior to the commencement of the action, returned or offered to return his or their portion of the dividends received by him or them from the Industrial Mining and Guaranty Company.

There was never any meeting called or held of the stockholders of said Seven Stars Gold Mining Company, but on April 4, 1893, several stockholders, representing themselves and about three hundred others, voluntarily met at Jersey City, and there made demand upon John Griffin, receiver, to commence this suit, and he refused so to do.

On and between the 20th of September, 1893, and September 30, 1897, Lawler and Wells received from the operations of the Hillside group of mines the sum of $37,376.86, and disbursed in such operations during that time the sum of $35,658.93. Between November 17, 1893, and the commencement of this action the plaintiffs, or said receiver, or any one of them, or either of them, did not make any demand upon Lawler and Wells for the possession of the properties in controversy, or any part thereof.

In 1895, C. B. Wiser and 20 others, stockholders in the Seven Stars Gold Mining Company, brought suit against Lawler and Wells and others in the district court of Yavapai county, setting up the facts, and alleging that the representations of ownership as set forth in the prospectus issued September, 1892, were false and fraudulent, and that plaintiffs were misled thereby; that Lawler and Wells assisted in the preparation and circulation of the said prospectus; and prayed that the court decree Lawler and Wells to have, by their conduct, estopped themselves, as against the plaintiffs and others in like estate, from asserting that the Seven Stars Gold Mining Company is not the owner of the mines and mining property described in the prospectus and pictured on the map, requesting a provision in the said decree for an accounting, and a money judgment against Lawler and Wells upon such accounting for all the proceeds and value of ore, bullion, and other property taken from the mines and mining property and received by the said Lawler and Wells between the 12th day of May, 1892, and the date of entry of final decree, together with a money judgment against Lawler and Wells for all damages caused by them to said mines and mining property; or that the court decree that the said plaintiffs and

all others in like estate may have and recover from the said Lawler and Wells the aggregate amount of money paid by plaintiffs and others in like estate for stock in the Seven Stars Gold Mining Company; and for other relief.

On May 13th, 1896, after taking part of the evidence, the plaintiffs amended the bill to conform to the proofs. To this amended complaint Lawler and Wells filed general and special demurrers and a plea of estoppel in the nature of an answer. Receiver Griffin filed a short answer. The Seven Stars Gold Mining Company and the Industrial Mining and Guaranty Company were adjudged in default for want of answer.

On September 22nd, 1897, the cause came on for hearing before Hon. H. C. Truesdale, presiding judge. Depositions were read, witnesses examined, documents offered in evidence, and the cause exhaustively argued. Thereupon the court entered an interlocutory decree in favor of plaintiffs, calling for an accounting before a master in chancery, and appointing a receiver for the property. Pending an accounting before the special master, Judge Truesdale died. The case was then assigned to Hon. Webster Street. The report of the special master was returned July 8, 1898. On July 12, 1898, the cause was further heard before his Honor, Webster Street, on the report of the special master in chancery and the report of the receiver. The report was by the court examined and approved. The resignation of the receiver was accepted, and the sureties on his bond discharged from liability, and Lawler and Wells, with consent of plaintiffs, were appointed receivers, without compensation, and judgment and final decree were entered in favor of plaintiffs in accordance with the findings and conclusions of Judge Truesdale, and Lawler and Wells filed a motion for a new trial. After full argument thereon, on October 22, 1898, the motion for a new trial was granted.

On November 1, 1898, by consent, the prayer of the complaint having in the meantime been amended, the case was submitted for decision to Judge Street upon the pleadings and the evidence then in the record, and upon the arguments made on the motion for a new trial, whereupon the court held that plainitffs were entitled to no relief, and ordered the dismissal of the complaint. The dismissal carried the cross bill with it. Findings of fact and conclusions of law were made and filed in the case by the court, and a decree in accordance therewith entered, and the motion (of plaintiffs) for a new trial was denied."

From this judgment the plaintiffs appealed to the Supreme Court of the Territory. The judgment of the District Court was, after elaborate argument, both at the hearing of the case and

upon a motion for rehearing, affirmed by the Supreme Court of the Territory. And plaintiffs have prosecuted their appeal from that judgment to this court.

No assignment of errors is to be found in the record.

The Supreme Court of the Territory having found and certified the facts to this court, and there being no exceptions to the rulings of either of the territorial courts upon the admission or rejection of evidence, the issue, and the only issue, before this Court for determination is:

Under the pleadings and upon the facts found by the Supreme Court of Arizona is the decree of that Court for the right party?

## BRIEF.

### I.

On appeal from the Supreme Court of a territory this court is without power to re-examine the facts, and can only determine whether the court below erred in the conclusions of law deduced by it from the facts as found, and review the errors in admitting or rejecting evidence duly excepted to, if any.

Act of April 7th, 1874, 18 U. S. Stat. at L. 27, 28.

That statute provides in regard to appeals from territorial courts to this court:

"On appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court, together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said Supreme Court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal."

The Supreme Court of the Territory made a full Finding of Facts (Appendix, pp.49-65); and no ruling of the trial court on the admission or rejection of evidence was excepted to, or certified by the court below.

The following cases construe the act and define the jurisdiction of this court in cases before it on appeal from territorial courts.

In *Harrison* v. *Perea,* 168 U. S. 311, Mr. Justice Peckham, delivering the opinion of the court, said:

"Our further examination must proceed upon the finding of facts as made by the court below, for this being an appeal from the Supreme Court of a territory, those findings are conclusive upon this court. The jurisdiction of this court on such an appeal, apart from exceptions duly taken to rulings on the admission or rejection of evidence, is limited to determining whether the findings of fact support the judgment. *Stringfellow* v. *Cain,* 99 U. S., 610: *Neslin* v. *Wells,* 104 U. S., 428: *Eilers* v. *Boatman,* 111 U. S., 356: *Idaho and Oregon Land Improv. Company* v. *Bradbury,* 132 U. S.,

509; *Mammoth Mining Company* v. *Salt Lake Foundry and Machine Company*, 151 U. S., 447, 450: *Haws* v. *Victoria Copper Mining Company*, 160 U. S., 303: *Gildersleeve* v. *New Mexico Mining Company*, 161 U. S., 573: *Bear Lake and River Water Works and Irrigation Company* v. *Garland*, 164 U. S., 1."

In *San Pedro and Canon Del Agua Co.* v. *United States*, 146 U. S., 120, Mr. Justice Brewer, delivering the opinion of the court, said:

"The Supreme Court of the Territory, at the request of the defendant, made and certified a statement of the facts in the case. This is in accordance with the act of April 7th, 1874 (18 Stat. L. 27), which, in section 2, a section providing for the exercise of the appellate jurisdiction of this court over the judgments and decrees of territorial courts reads: 'That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below and transmitted to the Supreme Court, together with the transcript of the proceedings and judgment or decree.' Construing this statute, it was held, in the case of *Idaho and O. Land Imp. Co.* v. *Bradbury*, 132 U. S., 509, 514, that, 'the authority of this court, on appeal from a territorial court, is limited to determining whether the court's findings of fact support its judgment or decree, and whether there is any error in rulings, duly excepted to, on the admission or rejection of evidence, and does not extend to a consideration of the weight of evidence or its sufficiency to support the conclusions of the court. *Stringfellow* v. *Cain*, 99 U. S., 610; *Cannon* v. *Pratt*, 99 U. S., 619; *Neslin* v. *Wells*, 104 U. S., 428: *Hecht* v. *Boughton*, 105 U. S., 235, 236; *Gray* v. *Howe*, 108 U. S., 12; *Eilers* v. *Boatman*, 111 U. S., 356; *Zeckendorf* v. *Johnson*, 123 U. S., 617.' Hence, notwithstanding the large volume of testimony taken and used in the court below has been incorporated into the record sent to us, we are not at liberty to review that testimony for the purpose of ascertaining whether the findings in the statement of facts are or are not in accordance with the weight of the evidence. This narrows materially the range of our inquiry."

In *Idaho and Oregon Land Improvement Company* v. *Bradbury*, 132 U. S., 509, Mr. Justice Gray, for the court, said:

"Congress has prescribed that the appellate jurisdiction of this court over 'judgments and decrees' of the territorial courts, 'in cases of trial by jury, shall be exercised by writ of error, and

in all other cases by appeal,' and 'on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified to by the court below,' and transmitted to this court with the transcript of the record. Act of April 7, 1874, chap. 80, section 2 (18 Stat. 27, 28).

"The necessary effect of this enactment is that no judgment or decree of the highest court of a territory can be reviewed by this court in matter of fact, but only in matter of law. As observed by Chief Justice Waite: 'We are not to consider the testimony in any case. Upon a writ of error, we are confined to the bill of exceptions, or questions of law otherwise presented by the record; and upon an appeal to the statement of facts and rulings certified by the court below. The facts set forth in the statement which must come up with the appeal are conclusive on us.' *Hecht* v. *Boughton*, 105 U. S., 235, 236."

*Zeckendorf* v. *Johnson*, 123 U. S., 617: *The Mammoth Mining Company* v. *The Salt Lake Foundry and Machine Company*, 151 U. S., 447: *Grayson* v. *Lynch*, 163 U. S., 468: *Holloway* v. *Dunham*, 170 U. S., 615: *Young* v. *Amy*, 171 U. S., 184.

In *Armijo* v. *Armijo*, 181 U. S., 558, Mr. Justice Peckham delivering the opinion of the court, said:

"In the absence of any findings by the Supreme Court of the Territory and also, being without anything in the nature of a bill of exceptions, we have nothing on which to base a reversal of the judgment in this case."

In *Marshall* v. *Burtis*, 172 U. S., 630, there was no statement of facts in the record, either from the District Court or Supreme Court of the Territory, and upon the assumption that the judgment of the territorial courts was justified by the evidence, the judgment of the Supreme Court of the Territory was by this court affirmed. Mr. Justice McKenna, for the court construing this statute, said:

"The necessary effect of this enactment is that no judgment or decree of the highest court of a territory can be reviewed by this court in matter of fact, but only in matter of law. As observed by Chief Justice Waite: 'We are not to consider the testimony in any case. Upon a writ of error we are confined to the bill of exceptions, or questions of law otherwise presented by the record; and upon an appeal to the statement of facts and rulings certified by the court below. The facts set forth in the statement which must come up with the appeal are conclusive on us.' *Hecht* v. *Boughton*, 105 U. S., 235, 236."

The reference made and persisted in throughout the appellants' brief to the discarded findings of fact of his Honor, Judge Truesdale, and the expressed views of that judge as to the effect of certain evidence, and the reference to or recitations of facts found by that judge in the defendants' motion for a new trial, can not strengthen appellants' position here for those statements are not within the compass of the inquiry of this court. The effect of these false premises is diffused through much of the argument. Instead of adding to the confusion by an analysis and dissection of the argument in the effort to eliminate the force of unsubstantial facts we shall content ourselves in the security which comes from the consciousness that this court will prove every asserted fact by the record, and will separate the tares from the wheat, though "both grow together until the harvest." And we submit that the printed brief would betray a better confidence in the merits of the controversy, and a higher conception of the duties of a lawyer, and a more sincere appreciation of the worth of the court to whom it is addressed by being confined to facts of which the court upon the record and under the law can take notice.

II.

The terms of the escrow agreement with the deed attached were explicit and fair. It was an agreement between competent parties, who were men of business experience. It stated clearly (a) the conditions on which the deed was to be delivered; (b) the terms of the license for the occupation and operation of the mine and the use of the machinery by Cowland and his agents.

It is to be remembered that the agreement contains no promise either on the part of Cowland or Warner to pay the price of the mine. Its effect is that upon payment of the fixed price at the times stated the mine shall be conveyed to Cowland.

(1) Such an agreement was usual and customary as to its terms and was well adapted to effectuate the intention of the parties concerning these mining properties. Time is held to be of the essence of such contracts; and their stipulations as to liquidated damages in the nature of forfeitures are regarded with favor, and are protected and enforced by law and equity courts. *Settle* v. *Winters*, 2 Idaho, 199; *MacBryde* v. *Weekes*, 22 Beav. 533; *Waterman* v. *Banks*, 144 U. S. 394; *Cheney* v. *Libby*, 134 U. S. 68; *Slater* v. *Emerson*, 19 How. 224.

Fry on Specific Performance, Sec. 716, says:

"The nature of all mining transactions is such as to render time essential; for no science, foresight, or examination can afford a sure guaranty against sudden loss, disappointment, and reverses; and a person claiming an interest in such an undertaking ought, therefore, to show himself in good time willing to partake of the possible loss as well as profit."

It is said in *Baum's Appeal*, 113 Pa. St. 58; l. c. 65:

"The nature of nearly all mining contracts is such as to render time essential, and in several cases it has been held of the essence of contracts for the sale of mines and works."

Indeed, this record shows that throughout this entire transaction the conduct of Lawler and Wells, while directed by high intelligence, is marked by a commendable spirit of leniency and efforts to relieve from loss all persons directly concerned in the transaction so far as is consistent with their substantial rights under the original contract. They granted Warner an extension on a part of the payment due November 12th, 1892. (Finding 21.) After the failure of Warner, on May 11th, 1893 they granted Cowland an extension upon the payment then about to become due; and it was not until after default had been made and it became apparent to every one connected with the transaction that

the terms of the escrow agreement could not be complied with that they took possession of the mine pursuant to the terms of that contract, on September 10th, 1893. (Finding 32.) In their cross complaint, Lawler and Wells tender to the Court and offer to deliver a deed and the possession of the said mines upon the payment of the balance due them under the escrow agreement. (Printed record p. 83.) And the plaintiffs, in their reply to that pleading, "refuse the tender of said Lawler and Wells in said cross complaint set forth." (Printed Record, p. 101.)

(2) The record title to the mines being in Lawler and Wells (Finding 1), and that record imparting notice to all the world of their ownership (R. S. Arizona, Sec. 2603*), the escrow agreement being fair and usual to the business transaction involved and not filed for record, the act of Lawler and Wells in executing that agreement and depositing it in escrow under the circumstances in which it was done, is utterly devoid of suspicion of bad faith, or of any purpose or intention to deceive, or to entrap any one into parting with his money for nothing. Nor can the fact that Lawler and Wells knew that Warner contemplated forming a corporation to operate the mines and "eventually vest the title thereto in said corporation in compliance with the terms of said escrow agreement,". (Finding 6), or that Lawler, about the first of September, 1892, became aware that an "American prospectus was *being prepared* for circulation for the purpose of promoting the sale of the Seven Stars Gold Mining Company" (Finding 20), and that the Blauvelt report and map and copies of the smelter returns, which had been delivered by Lawler and Wells to Cowland's agent on May 15th, 1892 (Finding 17), were being used as a basis of the description of said mines for the prospectus, detract in any degree from the honor and good faith of Lawler and Wells in respect to the execution of that contract. It is not charged in the bill nor intimated in the entire record that the facts recited in the Blauvelt report and map and smelter returns are not true.

The delivery of the occupation of the mines (Finding 7), under the terms of the license embodied in the escrow agreement, is

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*R. S. *Arizona*, 1887, Sec. 2603. "Every conveyance, covenant, agreement, deed, deed of trust, or mortgage in this act mentioned, which shall be acknowledged, proved or certified according to law, and delivered to the recorder of the proper county to be recorded, shall take effect and be valid as to all subsequent purchasers for a valuable consideration, without notice, and as to all creditors, from the time when such instrument shall be so acknowledged, proved and certified, and delivered to such recorder to be recorded, and from that time only."

likewise, when considered in connection with what had gone before it and the relationship of the parties to the transaction when it occurred, for it must be remembered this delivery was within three days of the date of the escrow agreement, a lawful transaction and innocent of any intent to mislead or beguile any person in regard to the ownership of the mines. The contract provided for such occupation, that is, that the licensees' possession should be subject to the legal possession of said Lawler and Wells; for "it is further agreed that said Lawler and Wells shall retain and remain in possession of said property until full payment of the purchase price shall be made; and Cowland recognizes and agrees to such possession; and any and all use made of it by or on the part of said Cowland shall be considered as said Lawler and Wells possession, as aforesaid." (Finding 3.)

(3) The deed, while in escrow, conveyed or vested no interest in the land.

In *Gaston* v. *City of Portland,* 16 Oregon, 255, l. c. 259, it is said:

"It is elementary that a delivery is essential to the execution of a deed, and until delivered it is no deed. A deed may be delivered as an escrow to any person other than the grantee, and does not become a conveyance so long as it remains in that condition or until the condition is performed upon which it is to take effect."

In *Murray* v. *Stair,* 2 Barn. & C. 87, it is said by Abbott, C. J.:

"But if the delivery itself at the time was conditional, so as not to constitute any present obligation, it was an escrow or writing merely and not a deed; and the condition of the delivery having been broken, it had never become the deed of the defendant."

In *Daggett* v. *Daggett,* 143 Mass. 516, l. c. 520, it is said:

"When a deed is delivered merely as an escrow, to take effect upon the performance of some condition by the grantee in the future, no title passes until the condition has been performed. The transaction is incomplete. It is not the grantor's deed until the second delivery. * * * The depositary has no authority to waive such performance, and an unauthorized delivery by him of the deed which he holds in escrow is entirely ineffectual to pass the title."

The occupation of the mine under a mere license transferred no interest in the mine.

It is held in *Silsby* v. *Trotter,* 29 N. J. Eq. 228, that a mere grant of a right to take ore, no estate or interest being granted,

is a license only and is not exclusive of the licensor unless the expressed intention of the parties is otherwise, or the implication is so clear and strong as to be unavoidable. The license to mine is a mere incorporal hereditament. *Boone* v. *Stover*, 66 Mo. 430; *Bainbridge on Mines*, p. 300.

(4) The English prospectus is not a material fact to this controversy.

It is found that "neither John Lawler nor Ed. W. Wells had any knowledge or information that this prospectus had been or was being circulated in England, nor had any knowledge or notice of its contents until sometime in the month of October, 1893." (Finding 16.) At that date the facts upon which it is sought in this suit to establish a cause of action had passed into history. The plaintiffs had long before acquired their stock and a month previously Lawler and Wells had taken exclusive possession of the mines conformable to the terms of the escrow agreement. And no certificates of stock were ever issued on account of the stock subscriptions made in England. (Finding 52.)

(5) Lawler and Wells were not the promoters of, or in any way interested in, the organization of the Industrial & Mining Guaranty Company, the Seven Stars Gold Mining Company, or in the issuance and circulation of the prospectus, or in the issuance and sale of the capital stock of either of said companies, or in the proceeds thereof. (Finding 51.)

They had no knowledge prior to the institution of the suit that any moneys received by them on the purchase price of the mines came from or was the money or any part of the money which was paid by any particular stockholder for the stock of these companies. (Finding 50.) While Lawler was notified first on May 20, 1893, that remittances on the Cowland contract were being made from money derived from the sale of stock of the corporation (Finding 26), it is an undisputed fact that no such stock was subscribed or paid for after May 15, 1893, and there is no finding that any stock was subscribed or paid for after May 20, 1893.

They were neither present when negotiations for the purchase or contracts of sale were being had or made, nor had any part in any contracts for the sale of such stock. (Finding 41.) They had no knowledge that Cowland had attempted to convey the mines with the consent of Warner to the Industrial & Mining Guaranty Company (Finding 34), or that the latter company had offered to sell a portion of this property to the Seven Stars Gold Mining Company pe. (Finding 35.)

The part of the escrow agreement relating to the occupation and operation of the mines was a personal one, running to Cowland and *his agents,* and the knowledge of Lawler and Wells that the Gold Company was operating the mines, in the absence of any knowledge on their part of the conveyance from Cowland to the Industrial Company, and from the Industrial Company to the Gold Company, would carry with it the presumption that the Gold Company was operating as the agent of Cowland; for when the act of an individual is as clearly consistent with lawful as with unlawful conduct, the presumption would be indulged that the conduct involving the act was unlawful.

## III.

Upon this record it cannot be asserted that Lawler and Wells made any misrepresentations or suggested any inducement whereby the plaintiffs were led to invest in the stock of the mining company. And, we assert, after a careful consideration of all the findings of fact, that unless the fact that Lawler and Wells, in the month of October, 1892, became aware that the American prospectus *was being distributed* by the Industrial Company and thereafter remained silent as to their ownership of the mine (Findings 37 and 38), constituted unconscientious conduct on their part; unless their silence and inaction constituted conduct grossly careless and negligent, considered in relation to the contextural facts then known to them; that is, unless the conduct was so careless and negligent as to brand them with a fraudulent intent, then that silence and inaction constituted no sufficient basis for the invocation of the doctrine of estoppel as sought to be applied in this case.

Assuming this proposition to state a correct principle of law, and we shall refer to some authorities supporting it in a subsequent part of this brief, we submit that,

(a) The Findings of Facts do not show that Lawler and Wells knew of any false statement in the prospectus.

There is no such thing as an estoppel in pais for neglecting to speak or act where the party did not know the facts, which if known, would have made it his duty to speak. *Delaplaine* v. *Hitchcock,* 6 Hill, 14, l. c. 17; *Acton* v. *Dooley,* 74 Mo. 63; *Galbreath* v. *Newton,* 30 Mo. App. 380, l. c. 399; *Biddle Boggs* v. *Merced Mining Co.,* 14 Cal. 279, l. c. 368.

The prospectus was a mere advertisement emanating from a corporation in which these gentlemen were in no way interested; nor were they concerned as to the result of that advertisement. They were men of affairs. Defendant Wells was a member of the Territorial Supreme Court. They believed Mr. Warner to be a man of integrity and business ability and of great wealth. They were under no duty or obligation to read the prospectus.

And that:

(b) The knowledge of a false statement contained in that prospectus cannot be implied from the fact that these defendants were aware that such prospectus was being distributed.

The knowledge of the distribution of the prospectus is easily reconcilable with the absence of knowledge of its contents. If we assume the prospectus came *into the hand* of Lawler and Wells (which is not found, nor is any fact found from which it should be implied), that fact alone will not raise the presumption that they had knowledge of the vague and scattered phrases relied upon by complainants as the basis of the alleged fraud. The prospectus is voluminous. (Original Record pp. 37 to 51, inclusive: Printed Record pp. 18 to 25, inclusive.) Its striking features are the guaranty of quarterly dividends of 15 per cent per annum, payable in gold, together with an agreement to redeem the stock at par at the expiration of two years. This guaranty and agreement were underwritten by the "Honorable H. H. Warner, of Warner Safe Cure fame," who had agreed to take 100,000 shares of the company of the par value of $500,000, and who was believed at that time, at least by Lawler and Wells, to have been financially able to make good his several obligations. Mr. Warner's agreement for the benefit of the subscribers to stock, as recited in the prospectus, was to deposit in trust bonds or stocks consisting only of such securities as are dealt in on the New York and London stock exchanges to an amount necessary to provide for the full payment of the five years dividends so guaranteed on all stock allotted on those subscriptions. The names of numerous well known and highly esteemed gentlemen were recited as directors, among whom was an Ex-United States Senator.

(c) Suppose they had opened the advertising circular which purported to be issued under date of September 24, 1892, and under title of "Objects," found the words, "This company is formed *to acquire* without further expense or liability to subscribers, on October 1st, 1892, as a going concern and *to provide* a working capital of $200,000 to further equip and develop" certain mines, that language would have made it perfectly clear to them that no attempt was being made to invade their rights in the mines, as

established and proclaimed by the recorded muniments of the title. And we submit that the only words in the whole prospectus that would have been subject to criticism by Lawler and Wells, had they read them, were the words in small type, "belonging to," at the bottom of the map, which was at the end of the prospectus, between the words in large type, "Group of Mines" and "Seven Stars Gold Mining Company." This map was a copy of a true map with which Lawler was familiar, but which did not have upon it the words "belonging to the Seven Stars Gold Mining Company."

We submit that on becoming aware of the existence and circulation of the advertising mining prospectus of fourteen pages, a busy man, who owned mines and whose title was of record, and who had entered into a written contract to sell them on certain expressed conditions to a man believed to be honorable and solvent and who had no interest whatever in the mining corporation formed for the purpose of taking title thereto eventually in compliance with the contract of sale, is not presumed to have knowledge of every statement contained in that prospectus.

The finding of fact, and the only fact disclosed by the record in this respect, is, "that the defendants, John Lawler and Ed. W. Wells, in the month of October, 1892, became aware that the American prospectus, "Exhibit D" to the original complaint, *was being distributed* by the Industrial & Mining Guaranty Company." (Finding 37.)

This Court has no authority to enlarge on the findings of fact certified by the Territorial Court; and in the absence of facts so certified rendering the judgment of the territorial court erroneous, the judgment should be affirmed.

It is said in *Marshall* v. *Burtis,* 172 U. S., 630, in respect to the jurisdiction of this Court on appeals from territorial courts:

"The necessary effect of this enactment is that no judgment or decree of the highest court of the territory can be reviewed by this court in matter of fact, but only in matter of law."

Where a special finding is silent upon a material fact, it is deemed a finding as to that fact against the party who has the burden of proof. *Dodge* v. *Pope,* 93 Ind. 480.

It is said in *Armijo* v. *Armijo,* 181 U. S. 558:

"In the absence of any findings of the Supreme Court of the territory and also being without anything in the nature of a bill of exceptions, we have nothing on which to base the reversal of the judgment in this case."

(d) Let us assume, for the argument merely, and not in fact, that Lawler and Wells did become aware of every word of

the contents of this prospectus at the time they learned of its circulation, and on that assumption consider their relation and obligations to the plaintiffs and the plaintiffs' obligations to them.

Muniments of title showing absolute right in Lawler and Wells to all the mining property involved were of record in the recorder's office of the county in which the mines were situated; and under the laws of the territory this record imputed notice to all the world of that ownership. The substance of such a law is not the expression of a local policy, but is conformable to a general policy prevalent throughout the civilized world. Also, the rule obtains throughout the United States, founded on either statute or common law, that real estate and the estates therein are assigned or created only by written instruments. This rule exists in conjunction with, and is the reason for, the rule as to the official record imparting notice.

The prevalent rule in America is that the mere silence or inaction of one who holds the record title to real property will not estop him from asserting his title thereto as evidenced and proclaimed by the public records. The rule is stated by Mr. Bigelow, in his work on estoppel, in this language (p. 575):

"It is well settled law that standing by in silence will not bar a man from asserting a title of record in the public registry, or other like office, so long as no act is done to mislead the other party; there is no duty to speak in such case." Citing *inter alia*, *Kingman* v. *Graham*, 51 Wis. 232; *Rice* v. *Dewey*, 54 Barber, 455; *Sulphine* v. *Dunbar*, 55 Miss. 255; *Mayo* v. *Cartwright*, 30 Ark. 407; *Knouff* v. *Thompson*, 16 Pa. St. 357; *Markham* v. *O'Connor*, 52 Ga. 183.

"These and many other cases to the same effect, proceed upon the ground, of course, that the silence of the party supposed to be estopped to assert his rights was no breach of duty to the person who asserted the estoppel. The latter had not, in contemplation of law been misled by the former's silence, and it follows that it is not enough to raise an estoppel that there was an opportunity to speak which was not embraced; there must have been an imperative duty to speak. Nor is any duty generated by the mere fact that a man is aware that some one may act to his prejudice if the true state of things is not disclosed. To use an apt illustration of one of the judges, a man may become apprised of the fact that his name has been forged to a negotiable instrument and so become aware that some one may be led to purchase the paper by supposing the signature to be genuine, and yet he is not bound to proceed against the forger or to take any steps to protect the

interests of others whose claims he may know nothing of. So long as he is not brought in contact with the person about to act and does not know who that person may be, he is under no obligation to seek him out or to stop the transaction which is not due to his own conduct, as the natural and obvious result of it." *Bigelow on Estoppel,* p. 575-6, citing, *Viele* v. *Judson,* 82 N. Y. 32, l. c. 40; *McKenzie* v. *British L. Co.,* 6 Appeal Cases, 82; *Leather Mfg. Bank* v. *Morgan,* 117 U. S. 96; *People* v. *Bank of North America,* 75 N. Y. 548, l. c. 560.

"In order that the owner of property which another has assumed to convey without authority may be precluded by silence from subsequently claiming it, it must appear that there were both an occasion and a duty to speak, and, in addition to this, that the omission to speak upon opportunity being presented was intentional or in negligent disregard of the plain dictates of conscience and justice." A. & E. Ency., 2nd Ed., Vol. 11, p. 432.

And he will not be estopped by his silence, though he may know or be informed that others are negotiating for rights and interests in property bound by his title of record, as he is under no obligation to warn or apprise them of that which the record discloses. *Porter* v. *Wheeler,* 105 Ala. 451; *Knouff* v. *Thompson,* 16 Pa. St. 357; *Sulphine* v. *Dunbar,* 55 Miss. 255; *Bales* v. *Perry,* 51 Mo. 449, l. c. 453; *Frazee* v. *Frazee,* 79 Md. 27; *Rice* v. *Dewey,* 54 Barb. 455; *Brinckerhoff* v. *Lansing,* 4 Johns. Ch. 64.

*Bramble* v. *Kingsberry,* 39 Ark. 131, holds that knowledge by an owner of land that one is about to buy it from another does not impose upon the owner the duty to seek out that one and advise him not to buy.

In *Sullivan* v. *Davis,* 29 Kan. 28, the Court, in an opinion by Brewer, J., hold that a land owner is not estopped, by knowing that a lithographed map showing a subdivision of his land into lots and blocks is in circulation, to deny the validity of such subdivison.

In *Knouff* v. *Thompson,* 16 Pa. St. 357, l. c. 364, it is said by Chancellor Kent:

"The party who has placed his written title on record has given the notice which every person is bound to know and respect. The law does not require him to go further. But if he speaks or acts, it must be consistent with his legal title. The law distinguishes between silence and encouragement."

In *Davis* v. *Davis,* 26 Cal. 23, it is said:

"The doctrine of estoppel in pais should not be too readily extended when the effect of it is to divest men of their estates in lands. It should be remembered that we have a statute which

makes a writing essential to the assignment or creation of an estate in real property, and that one of the objects of such statute was to render estates secure. In *Parker* v. *Barker*, 2 Metcf. 423, the Supreme Court of Massachusetts held that a parol stipulation made by one party and acted on by the other, will not constitute an estoppel with reference to land, unless it be attended by actual fraud or concealment."

In *Alexander* v. *Kerr*, 2 Rawle, 90, Gibson, C. J., discussing the effect of recorded muniments of title, says:

"While courts of justice have, on the one hand, endeavored to repress dishonesty, they have, on the other, exacted the utmost vigilance and caution. It is difficult to imagine how the concealment of a fact which an individual of common prudence and sagacity can discover, can constitute a fraud."

In *Thompson* v. *Simpson*, 128 N. Y. 270, l. c. 289, 291, it is said for the court by Andrews, J:

"An estoppel may arise from silence as well as words. But it is only when there is a duty to speak, and the party upon whom the duty rests has an opportunity to speak, and knowing the circumstances requiring him to speak, keeps silent. * * * The owner of property which another has assumed to convey without authority, is not precluded by mere silence from subsequently claiming it. There must in addition have been both an occasion and a duty to speak, and it must appear that the omission to speak, upon opportunity being presented, was intentional or in negligent disregard of the plain dictates of conscience and justice. * * * The mere fact that another may act to his prejudice if the true state of things is not disclosed does not render silence culpable, and mere inaction in such a case is not sufficient. (*Bigelow on Estoppel*, 595.) The true owner owes no duty of active diligence to protect the other party from injury. * * *

"The security of legal titles to real property and the uniform policy of the law require that the doctrine of equitable estoppel, where invoked to bar the assertion to the legal title to land, should be cautiously applied, and only when grounds for the application are clearly and satisfactorily established." *Trenton Banking Co.* v. *Duncan*, 86 N. Y. 221.

*Dameron* v. *Jamison*, 143 Mo. 483. Ejectment. Defendant was in possession of the land. He had taken possession of it under a tax deed and had made valuable improvements upon the land and paid the taxes thereon in ignorance of any claim of the plaintiffs; but the plaintiffs had knowledge of all these acts of defendants as they occurred. Plaintiffs permitted the expenditure by standing

by in a state of silence and inaction, and did not inform the defendant of their claim or right to the land. The tax deed was held void and the facts recited were held to constitute no defense. The Court say:

"It is then stated (in the pleading), that defendant was induced to make such improvements under the *belief that his title was good* and that plaintiffs did not claim any interest in the land, and that his *belief* was induced by their acts, conduct and statements. No statements upon which this belief was based are set out. There is nothing pleaded to indicate that anything was said by plaintiffs that authorized or warranted any such belief. No misrepresentations are charged. The acts and conduct relied upon in this part of the answer are evidently the failure to notify defendant of plaintiffs' title. This was of record. It was as much the duty of defendant as of plaintiffs to know whether the tax proceedings under which he claimed were regular and valid. They were under no obligation to inform him upon that subject. Silence upon plaintiffs' part was no breach of duty and will not estop them from asserting their title. 'If a man holds title to his lands by deed which has been duly recorded, it is all the notice he is bound to give so long as he remains passive.' *Bales* v. *Perry*, 51 Mo. 449; *Kingman* v. *Graham*, 51 Wis. 232; *Mayo* v. *Cartwright*, 30 Ark. 407; *Throckmorton* v. *Pence*, 121 Mo. 50."

## IV.

Were the plaintiffs justified in relying on the statements of the prospectus as establishing as against the world that the title to the mines was vested in the Gold Company?

(a) In *Banque* v. *Brown*, 34 Fed. 196, Wallace, J., states what is common knowledge in regard to a prospectus, in this language:

"It is utterly improbable that men of the acuteness and experience of the complainants were induced to put millions of dollars of money in a speculation by the confidence reposed in any prospectus. None would have appreciated better than they the unreliability of such a statement or understood better the inaccuracies and exaggerations which generally characterize such advertise-

ments. * * * No purchaser of bonds was justified in assuming that the company intended to tie itself, which under the exigencies of the enterprise might become unjudicious or impracticable or in attributing such a meaning to the recitals as they would bear if contained in a contract."

There were persuasive inducements offered in the prospectus to purchasers of stock, namely: the guaranteed agreement to pay for five years a 15 per cent annual dividend; the offer to redeem in two years; the deposit of stocks and bonds dealt in on the New York and London stock exchange as security to make the dividend agreement good. But the question is whether or not the intending stock subscriber was justified as against the world in relying upon the representations in the prospectus as to the title being vested in the corporation? If the subscriber has faith in the resources and money making capacity of the corporation in which he subscribes, or in his express contract with that corporation which induces his subscription to the stock, that is one thing; his rights growing out of a reliance upon representations as to the character of the title to real estate claimed by the corporation, is another.

The rules of the trade applicable to persons purchasing an interest in mines is stated in MacSwinney's Law of Mines (p. 187) in this language:

"A purchaser of a mine, or any share or interest therein, which includes a share or interest in the land itself, is entitled to a regular abstract of title. A purchaser of a share in a mining concern which does not include any interest in the land itself is not entitled to an abstract, but only to such evidence of the constitution of the concern and of the nature of the title under which the land is worked as will show that the subject matter of the purchase is what it professes to be and that the proposed transfer will give him a valid title to the share." *Curling* v. *Flight*, 2 Ph. Ch. R. 613.

"Where a third person is in possession of or working mines or quarries, knowledge of the title under which such possession is held will be imputed to the purchaser of the land containing said mines or quarries." *MacSwinney's Law of Mines*, p. 189. *Holmes* v. *Powell*, 18 DeG. M. & G. 572.

The possession of a licensee is the possession of the owning licensor.

Legal possession is peculiarly forceful in determining the right of property in mines. *United States R. S.*, Sec. 910.

Lawler and Wells held the legal possession of the mines during the whole period under review; and there is no reason suggested anywhere in the record to doubt that an inquiry of any one in the occupancy of the mines would have disclosed the fact of that possession. Persons dealing with mining properties will be held to know and act with respect to all general laws and customs appertaining to such properties.

(b) If the purchaser is intending to rely upon the loose expressions of a prospectus it becomes his duty to read every word of it, and to give those words their usually accepted meaning.

Bigelow on Estoppel, page 562, states the rule thus:

"The whole representation must be taken together. One part, although sufficient alone to create an estoppel, cannot be separated from another part connected with it which takes away its effect though only by making the other part uncertain."

The representation to justify a prudent man in acting upon it must be plain, not doubtful, or matter of questionable inference. *Tillotson v. Mitchell,* 111 Ill. 518; *Blodgett v. Perry,* 97 Mo. 263; *Bennett* v. *Dean,* 41 Mich. 472; *Keating* v. *Orn,* 77 Pa. St. 89.

It must have reference to a present or past state of things.

*Bigelow on Estoppel,* p. 555; *Jackson* v. *Allen,* 120 Mass. 64, l. c. 79; *Burgess* v. *Seligman,* 107 U. S. 20; *Starry* v. *Korab,* 65 Ia. 267. Presumptions favor defendants. *Southern D. Co. v. Silva,* 128 U. S. 249.

The prospectus was issued under date of September 24th, 1892. (Finding 14.) It recited: "Objects.—This company is formed *to acquire* without further expense or liability to subscribers on October 1st, 1892, as a going concern *and to provide* a working capital of $200,000 to further equip and develop the Seven Stars," etc. (Printed Record p. 20.)

This is clearly a reference to an expectation and a statement with reference to an event to occur in the future; and inferentially involves the truth that the company at the time of the issuance of the prospectus had no title to the mines. In connection with the statement just quoted, what effect is to be given to the words "this company presents an unusual opportunity for investors to acquire an interest in one of the richest and most extensive gold mines of the world in which are not only dividends payable quarterly in gold of fifteen per cent. per annum, but on stock allotted on this subscription guaranteed for five years should they become dissatisfied with their investment as stated." (Printed Record p. 19.)

Persons who are so simple as to believe that when they buy stock in a mining corporation they acquire an interest and title in

real property, although that property may be owned by the corporation, have no business in mixing up with such complicated financial transactions as the investment in mining property involves. Such a statement cannot, by any reasonably prudent and experienced person, be construed as an unambiguous representation that the mining company owns a fee simple title to the mine it is engaged in exploiting. Any reasonably prudent person, when investing in the stock of a mining corporation then being formed to acquire a property, must contemplate and be presumed to know that valuable mines with fully equipped mills and constituting a then going concern, which had within a short period produced and sold ore of a value exceeding $178,000, were not to be acquired as a gratuity, and that the enterprise could not be a success until the capital stock, to some substantial extent at least, was paid up and in the treasury. If one-sixth of the capital stock of the Seven Stars Gold Mining Company had been paid in, the controversy now before the Court would never have occurred.

(c) The small words on the map "belonging to," construed with the language of the prospectus above referred to, do not make the statement as to the title to the mine unambiguous, or such that a reasonably careful and prudent man would rely upon them as evidence of title. The words "belonging to" mean about the same as "the property of," and these terms when applied to real estate are of a vague and indefinite significance.

One who has agreed to buy real estate and taken a bond for a deed, the deed to be executed upon the payment of the purchase price, speaks of himself as the owner, and of the property as belonging to him. One who, under an agreement to purchase, has land conveyed to him and gives back a deed of trust to secure the payment of the entire purchase price, so that his real interest in the land is nominal, the title subject to a condition, speaks of the property as belonging to him, and the land is referred to in common parlance as his property. In ordinary uses those terms have no significance in determining the extent of interest or character of title held by the so-called property owner.

The word *owner* is said, in *Gitchell* v. *Cridley,* 84 Mo. 476, to have "no precise legal significance."

And in *People* v. *Cady,* 105 N. Y. 299, it is said, in construing a statute relative to the collection of a tax, that the words "belonging to the same owner" "do not mean simply the technical owner of the title as therein used, but they mean the person in whose name as owner or occupant the lots are assessed."

(d) Did the plaintiffs, as reasonable men, presume, upon receiving a copy of this prospectus of the mining corporation from the office of the corporation in New York City and upon reading the representations contained in it as to the ownership of the mine, that, in case those representations were not true the real owners of the mine, whoever and wherever they were, (who, in fact, resided on the opposite side of the continent), would know of that representation and would seek out the plaintiffs and warn them that they, Lawler and Wells, held the legal title to the mines and had legal possession of them, and had done nothing more than to enter into a contract to deliver a deed to the mines when the stipulated price had been paid?

Such a presumption could not have been indulged in:

Because no reasonable person would assume that this declaration would reach the owner of the mines if the statement contained therein were untrue:

Because it is not customary or usual in America for persons who hold a legal title to property with muniments of title duly recorded, of which the world has notice, to proclaim by newspaper publication, hand bills, or telegraphic dispatches that they are the owners:

Because of the inherent difficulties of bringing the matter to the notice of persons liable to be affected by such misrepresentations before the damage had been done. In other words because of the futility and expense of such attempts.

If the plaintiffs, as reasonable people, did not presume that in case the representations in the prospectus were untrue, Lawler and Wells would have broken the silence, would have shaken off their inactivity and denied those representations, and that such a denial would have been brought home to them, the plaintiffs, then it cannot be said that that silence and that inactivity *induced* or *was a material inducement* for the plaintiffs to purchase the stock. Indeed the record seems to have eliminated this element of inducement from the case, and if so, then as a consequence, the case from the courts. The court found as a fact:

"That the subscribers to the capital stock of the Seven Stars Gold Mining Company, in making their several subscriptions therefor and payments thereon, did so without any knowledge of and *without relying on* anything said or done, or omitted to be said or done in the premises, by the said Lawler and Wells or either of them." (Finding 44.)

And they further found:

"That John Lawler and Ed. W. Wells did not, before or at the time of any subscriptions to the capital stock of the Seven Stars

Gold Mining Company or payment on account of said subscriptions, make any representations to or communicate with any subscriber of said stock concerning any matter or anything in issue herein." (Finding 45.)

## V.

The decisions of courts recognizing, defining and enforcing the principles of equitable estoppel are so numerous as to seem to have considered and applied them to an infinite variety of facts and circumstances; but the diligence of counsel on both sides of this controversy has not been rewarded with the precedent of the case at bar.

While silence and inaction under certain conditions, and in respect to certain relations existing between the parties affected, have been recognized as a sufficient basis for the enforcement of the salutory principle of equitable estoppel, it is submitted that every worthy precedent upon this subject can be harmonized, by this rule:

The silence and inaction which create an estoppel occur under such circumstances and are committed by a person sustaining such a relation to the other that the person seeking to enforce the estoppel would reasonably presume such silence and inaction to be a positive representation on the part of the other of the truth of the fact of which the contrary is sought to be asserted.

Mr. Pomeroy, in his work on Equity Jurisprudence (Sec. 805), says:

"The conduct must be done with the intention, or at least with the expectation, that it will be acted upon by the other party, or under such circumstances that it is both natural and probable that it will be so acted upon."

Speaking more particularly of estoppel as applied to interests in lands, he says (Sec. 807):

"This equity, being merely an instance of fraud, requires intentional deceit, or at least that gross negligence which is evidence of an intent to deceive. In the language of a most worthy decision, to preclude the owner of land from asserting his title or interest under such circumstances, 'there must be shown, either actual fraud

or the fault of negligence, equivalent to fraud on his part in concealing his title; or that he was silent when the circumstances would impel an honest man to speak, or such actual intervention on his part as in *Storrs* v. *Barker,* so as to render it just that as between himself and the party acting upon his suggestion, he should bear the loss.' What is the result of this rule? It is accurately explained in the same decision. While the owner of the land may, by his acts in pais, preclude himself from asserting his legal title, it is obvious that the doctrine should be carefully and sparingly applied and only on the doctrine of clear and satisfactory grounds of justice and equity. It is opposed to the whole of the statute on frauds and it would greatly tend to the insecurity of titles if they were allowed to be effected by parol evidence of right of doubtful character." *Brant* v. *Virginia C. & I. Co.,* 93 U. S. 326.

In *Bloomfield* v. *Charter Oak Nat. Bank,* 121 U. S. 121, opinion by Mr. Justice Gray, it is said:

"And no estoppel in pais can be created, except by conduct which the person setting up the estoppel has the right to rely upon, and does in fact rely and act upon. *Burgess* v. *Seligman,* 107 U. S. 20; *Scovill* v. *Thayer,* 105 U. S. 143; *Brant* v. *Virginia C. & I. Co.,* 93 U. S. 326."

The omission of Lawler and Wells to publicly proclaim their title to the mines under all the facts disclosed by the record was not inconsistent with good faith, fair dealing and high character. Such conduct removes all the foundations from which the principles of equitable estoppel may be applied.

"Estoppel in pais may be defined as a right arising from acts, admissions or conduct which have induced a change of position in accordance with the real or apparent intention of the party against whom they are alleged." *Bigelow on Estoppel,* 4th Ed. p. 445; *Gray* v. *Gray,* 83 Mo. 106; *Yates* v. *Hurd,* 8 Colo. 343.

Speaking further on the subject of estoppel from conduct, misconduct or misrepresentations, the learned author says, p. 543;

"In its most common phase this estoppel is founded upon deceit and has its justification in the duty of courts to prevent the accomplishment of fraud. The estoppel in question consists in holding for truth a representation acted upon when the person who made it, or his privies seek to deny its truth and deprive the party who has acted upon it of the benefit obtained."

In *Delaplaine* v. *Hitchcock,* 6 Hill 14, it is said:

"The mouth of a party will sometimes be closed after he has omitted to speak at the proper time, and thus has been the occasion of misleading a third person. * * * An estoppel in

pais is a moral question. It can only exist where a party is attempting to do that which casuists would decide to be a wrong: something which is against good conscience and honest dealing."

In *Sulphine* v. *Dunbar,* 55 Miss. 255, l. c. 260, Campbell J. for the court in discussing the obligation of a person having an interest in land to speak out when she knew other persons were negotiating for the purchase of the land, declared:

"*She had a right to be silent.* Her title to an interest in the land was indisputable, and the world had notice of it."

*Herman on Estoppel* in Sec. 948, says: "It is only when silence becomes a fraud that it postpones. The element of fraud is essential, either in the intention of the party estopped or in the fact of the evidence which he attempts to set up. The primary ground of this estoppel is, that it would be a fraud in the party to assert what his previous conduct had denied, when on the faith of that denial others have acted."

In *Commonwealth* v. *Moltz,* 10 Pa. 527, the court say:

"He who avers an estoppel, either by pleading or evidence, must establish by proof, positive or circumstantial, every fact that essentially enters into the character of such a reply to the plaintiffs' suit. It is to be considered that the doctrine of estoppel is an exception to the general rule for the prevention of fraud and is not to be extended beyond the reasons on which it is founded. 1 *Green* 1, *Ev.,* Sec. 204." * * * "It is now established that in all cases where an act is done or a statement made by a party, the truth or efficacy of which *would be a fraud* on his part to controvert or impair, the character of an estoppel shall be of what would otherwise be mere matter of evidence. * * * It is the presence of fraud, either in the intention of the party or the effect which would be worked, by permitting him a negation that distinguishes this species of estoppel from what was so considered by the old common law. But it is obvious there can be no such fraud where the purchaser, or other actor was or ought to have been acquainted with the subject of his action or even had the means of knowledge and neglected to avail himself of them."

It is said in *Brewer* v. *Railroad,* 5 Metcf. 479:

"A party is not to be estopped to prove a legal title to his estate by misrepresentation of its locality made by a mistake without fraud or intentional deception, although another party may be induced thereby to purchase an adjoining lot, the title to which may prove defective; for he may require a warranty, and it would be most unjust that a party should forfeit his estate by a mere mistake."

In the celebrated case of *Biddle Boggs* v. *Merced M. Co.*, 14 Cal. 279, in the opinion by Chief Justice Field it is said:

"The only matters alleged in the answer by way of estoppel are the private survey of Fremont in 1849, and his presentation of the same to the Board of Commissioners, as embracing and identifying the tract he claimed, and subsequent public and repeated disclaimers by him at the time the defendant took possession of the premises in controversy in 1851, and, afterwards, up to July, 1855, of any title or claim to the property, and of any title or claim to any land within the exterior bounds of the grant to Alvarado, except that designated in his survey.

"Upon these declarations, the answer avers the defendant acted and was induced to make valuable and permanent improvements upon the premises in controversy and adjacent property, at an expenditure of upwards of eight hundred thousand dollars, and insists that the plaintiff is thereby estopped from asserting any title under Fremont. Other matters are, also, urged by way of estoppel, not alleged in the answer, and which, but for the stipulation of the parties, would not be considered by the Court. In the affidavits for a continuance, to which we have already referred, it was stated that the defendant expected, by several witnesses named, to prove that from the time possession was taken of the premises, to that date, Fremont knew of the claim of the defendant to the property, and its occupation and improvement, and never set up any title to the same until July, 1855, or forbid the occupation and improvement. To prevent the continuance it was admitted that the witnesses, if present, would testify as stated, and that their testimony should be deemed as actually given, or as offered and overruled as improper.

"The Court passed upon these matters, and found that up to July, 1855, Fremont claimed the premises in his survey, and made the representation and disclaimers alleged to the property in controversy, but that it was not shown that he wilfully made them, or intended to deceive or defraud the defendant, or to influence its conduct, but that they were made 'without any fraudulent intent and before the final location of his claim, and when it was unknown where the lines thereof would be fixed,' and that he knew of the occupation and improvement of the defendant from the time possession was taken, without forbidding the same, or claiming the premises, until July, 1855.

"It is undoubtedly true that a party will, in many instances, be concluded by his declarations or conduct, which influences the conduct of another to his injury. The party is said, in such cases, to

be estopped from denying the truth of his admissions. But to the application of this principle, with respect to the title of property, it must appear, first that the party making the admission by his declarations or conduct, was apprised of the true state of his own title; second, that he made the admission with the express intention to deceive, or with such careless and culpable negligence as to amount to constructive fraud; third, that the other party was not only destitute of all knowledge of the true state of the title, but of the means of acquiring such knowledge, and fourth, that he relied directly upon such admission, and will be injured by allowing its truth to be disproved.

"These qualifications in the application of the doctrine will be found fully sustained by the authorities. There must be some degree of turpitude in the conduct of a party before a court of equity will estop him from the assertion of his title and the effect of the estoppel being to forfeit his property and transfer its enjoyment to another. 'In all this class of cases,' says Story, speaking of equitable estoppels, 'the doctrine proceeds upon the ground of constructive fraud, or of gross negligence which, in effect, implies fraud. And, therefore, where the circumstances of the case repel any such inference, although there may be some degree of negligence, yet courts of equity will not grant relief. It has, accordingly, been laid down by a very learned judge, that the cases on this subject go to this result only, that there must be positive fraud or concealment, or negligence, so gross as to amount to constructive fraud.' (1 Story's Eq. Sec. 391.)

" 'In order to the introduction of this equity,' says Adams in his treatise on the doctrine of equity, 'it is essential that there be intentional deceit in the defendant, or, at all events, that degree of gross negligence, which amounts to evidence of an intent to deceive.' "

In concluding this branch of the subject the learned judge says:

"To give the declarations and disclaimers made under these circumstances the effect of an estoppel, operating as it would to deprive Fremont of his estate in the premises, a transfer of it to the defendant would be in the highest degree unequitable and unjust. There is no proof of any intention to deceive nor of any facts from which such an intention can be justly inferred."

A case somewhat similar in its controlling facts to the one last cited, is *Henshaw* v. *Bissell,* 85 U. S. 255. Mr. Justice Field, discussing the doctrine of equitable estoppel says: "For its application there must be some intended deception in the conduct or

declarations of the party to be estopped, or such gross negligence on his part as to amount to constructive fraud.

"An estoppel in pais is sometimes said to be a moral question. Certain it is that to the enforcement of an estoppel of this character, such as will prevent a party from asserting its legal rights to property, there must generally be some degree of turpitude in his conduct which has misled others to their injury."

*Morgan* v. *Chicago, etc., R. Co.*, 96 U. S. 716, opinion by Mr. Justice Swayne.

Morgan, the appellant, had been engineer on the railroad, the predecessor of appellee, when the road was located, and it became his duty to act for the road in obtaining the right of way. He, with Spencer, another engineer, who was clothed with the same duty, owned the land in controversy and made a town plat on which the land in question was marked "depot." The company made a map from the data supplied by Morgan and with his knowledge, in which this land was marked "depot ground," and it was subsequently improved by the railroad company as such.

Spencer testified that he supposed the making of the town plat vested a sufficient title in the company. He added, "Had I not thought so it would have been my duty, as engineer of that division, to have seen that the company had a proper deed." He said further that Morgan occupied the same relation to the company as himself and was clothed with the same duty. Another partner in the land testified that, "Looking at the interests of the parties as affected by the location of the depot I have always supposed that good faith on our part demanded that these strips should belong to the railroad." Morgan himself testified, "I set them (the lands in controversy) apart with a view to the ultimate needs of the railroad company at this station."

To these facts the following language of the learned judge is strikingly appropriate:

"The appellee insists that the record discloses a case of estoppel in pais, and that the appellant is thereby barred from maintaining the claim which he seeks to enforce in this litigation. The principle is an important one in the administration of the law. It not unfrequently gives triumph to right and justice where nothing else could save them from defeat. It proceeds upon the ground that he who has been silent as to his alleged rights, when he ought in good faith to have spoken, shall not be heard to speak when he ought to be silent. *Bank* v. *Lee*, 13 Pet., 107.

"He is not permitted to deny a state of things, which, by his culpable silence or misrepresentations, he had led another to believe existed, and who has acted accordingly upon that belief. The

doctrine always presupposes error on one side and fault or fraud upon the other, and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage. *Merchants Bank* v. *State Bank,* 10 Wall. 604. * * *

"It is incredible that the depot would have been put there if any doubt had been entertained as to the ownership by the company of property so vital to its beneficial use. It would also have been a gross fraud on the part of the appellant, who was then in the service of the company as an engineer, to stand by in silence and see it erected under such circumstances."

The opinion in *Leather Mfgrs. Bank* v. *Morgan,* 117 U. S. 108, was delivered by Mr. Justice Harlan and contains a lucid dicussion of the relationship between a depositor and his bank and their mutual obligations relative to the inquiry, whether a depositor is estopped by his negligence in failing to examine his account and pass book when balanced by the bank and returned to him, when such an examination would have discovered forged checks which had been charged to his account during a period covering about six months. It was held by the court to be obligatory upon the depositor to make such examination. In the opinion it is said:

"The depositor cannot, therefore, without injustice to the bank, omit all examination of his account, when thus rendered at his request. His failure to make it or to have it made, within a reasonable time after opportunity given for that purpose, is inconsistent with the object for which he obtains and uses a pass book. * * *

"Without impugning the general rule that an account rendered which has become an account stated, is open to correction for mistake or fraud, (*Perkins* v. *Hart,* 11 Wheat. 237; *Wiggins* v. *Burkham,* 10 Wall, 129), other principles come into operation, where a party to a stated account, who is under a duty, from the usages of business or otherwise, to examine it within a reasonable time after having an opportunity to do so, and give timely notice of his objections thereto, neglects altogether to make such examination himself or to have it made, in good faith, by another for him; by reason of which negligence, the other party, relying upon the account as having been acquiesced in or approved, has failed to take steps for his protection which he could and would have taken if such notice had been given. In other words, parties to a stated account may be estopped by their conduct from questioning its conclusiveness. * * *

"The general doctrine, with proper limitations, was well expressed in *Freeman* v. *Cooke,* 2 Exch. 654, and in *Carr* v. *London & N. W. Ry. Co.,* L. R. 10 C. P. 307. In the first of those cases

it was said by Parke, B., for the whole court, that, 'if, whatever a man's real intention may be, he so conducts himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it, and did act upon it as true, the party making the representation would be equally precluded from contesting its truth; and conduct, by negligence or omission, when there is a duty cast upon a person by usage of trade or otherwise to disclose the truth, may often have the same effect." And in the other case, Brett, J., speaking for the court, said: "If in the transaction itself which is in dispute, one has led another into the belief of a certain state of facts by conduct of culpable negligence calculated to have that result, and such culpable negligence has been the proximate cause of leading, and has led, the other to act by mistake upon such belief, to his prejudice, the second cannot be heard afterwards, as against the first, to show that the state of facts referred to did not exist, * * *

"These cases are referred to for the purpose of showing some of the circumstances under which the courts, to promote the ends of justice, have sustained the general principle that, where a duty is cast upon a person, by the usages of business, or otherwise, to disclose the truth,—which he has the means, by ordinary diligence, of ascertaining,—and he neglects or omits to discharge that duty whereby another is misled in the very transaction to which the duty relates, he will not be permitted, to the injury of the one misled to question the construction rationally placed by the latter upon his conduct. * * *

"The principle stated by Lord Campbell in *Cairncross* v. *Lorimer*, 3 Macq. 827, 830, that 'if a party has an interest to prevent an act being done, has full notice of its having been done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have if it had been done by his previous license.' This, however, could not be if, as claimed, the depositor was under no obligation whatever to the bank to examine the account rendered at his instance, and notify it of errors therein in order that it might correct them, and, if necessary, take steps for its protection by compelling restitution by the forger."

In *Brant* v. *Virginia Coal & I. Co.*, 93 U. S. 326, Mr. Justice Field, for the court, said:

"It is difficult to see where the doctrine of equitable estoppel comes in here. For the application of that doctrine there must generally be some intended deception in the conduct or declarations of the party to be estopped, or such gross negligence on

his part as to amount to constructive fraud, by which another has been misled to his injury. 'In all this class of cases,' says Story, 'the doctrine proceeds upon the ground of constructive fraud or of gross negligence, which in effect implies fraud. And, therefore, when the circumstances of the case repel any such inference, although there may be some degree of negligence, yet courts of equity will not grant relief. It has been accordingly laid down by a very learned judge that the cases on this subject go to this result only, that there must be positive fraud or concealment, or negligence so gross as to amount to constructive fraud.' (1 Story Eq., 391.) To the same purport is the language of the adjudged cases. Thus it is said by the Supreme Court of Pennsylvania, that, 'the primary ground of the doctrine is, that it would be a fraud in a party to assert what his previous conduct had denied, when on the faith of that denial others have acted. The element of fraud is essential, either in the intention of the party estopped, or in the effect of the evidence which he attempts to set up.' *Hill* v. *Epley*, 31 Pa. St. 334; *Henshaw* v. *Bissell*, 18 Wall. 271; *Biddle Boggs* v. *Mining Co.*, 14 Cal. 368; *Davis* v. *Davis*, 26 Cal. 23; *Com.* v. *Moltz*, 10 Pa. 531; *Copeland* v. *Copeland*, 28 Me. 539; *Delaplaine* v. *Hitchcock*, 6 Hill. 616; *Havis* v. *Marchant*, 1 Curt. C. C., 136; *Zuchtmann* v. *Robert*, 109 Mass. 53. And it would seem that to the enforcement of an estoppel of this character with respect to the title of property, such as will prevent a party from asserting his legal rights, and the effect of which will be to transfer the enjoyment of the property to another, the intention to deceive and mislead, or negligence so gross as to be culpable, should be clearly established."

It is unnecessary to consider in any aspect of this case the claims of the plaintiff, Clinton B. Wiser, who seems to be the bell wether and the inspiration of this suit, and the largest stock subscriber, whose subscriptions began with October 13th, 1892, and continued at intervals until March 27th, 1893, and aggregated a total subscription of $7,851.40; for "the plaintiff, Clinton B. Wiser, was a director of the Seven Stars Gold Mining Company and his name appeared on the prospectus as such director, and he assisted in the circulation of the American prospectus and in the sale of the stock of that corporation, and during all that time he had knowledge and notice that the title to the property in controversy was not vested in the Seven Stars Gold Mining Company." **(Finding 39.)**

But we submit that a consideration of all the facts presented by this record will impress the mind with the conviction that none of the other complainants were any more induced by the silence or inaction or other uncommunicated conduct of Lawler and Wells to invest in the mining stock to their hurt than was their co-complainant, Clinton B. Wiser.

## VI.

The fact that "on May 20th, 1893, Lawler received notice in writing that remittances on account of the Cowland contract were being made from money derived from the sale of the stock of the Seven Stars Gold Mining Company" (Finding 26), is not effective as a ground of estoppel against him or Wells. There is no finding of fact to the effect that a single share of the stock was subscribed or paid for after the 20th day of May, 1893. Nor is there any finding of fact to the effect that any money realized from the sale of the shares of stock in question were paid to or received by either Lawler or Wells or the bank for them after that date. The only payments received by them, other than that realized from ores taken from the Hillside group of mines after May 20th, 1893, were received on the following dates: On June 3d, 1893, $4,500; June 5th, 1893, $2,200; August 4th, 1893, $4,500. These sums came from the Industrial Mining and Guaranty Company. And while the record does not show that the company obtained any money from stock subscriptions after May 15th, 1893 (and such a showing must be made to raise a debatable question in this respect), it is found by the court that $43,700 was obtained by that company from loans subsequent to May 11th, 1903. (Finding 49). If this finding of fact is not sufficient to expressly indicate that the $11,200 comprised of the three items last mentioned was derived from those loans, it is at least sufficient to raise a presumption of fact that such was the source of that fund, and that it did not come from the money collected by the company from the sales of stock to plaintiffs or any other stockholder.

## VII.

The facts established by this record are not such that equity will impress the moneys paid to Lawler and Wells under the Cowland contract with the character of a trust fund for the benefit of plaintiffs.

In the absence of any finding that Lawler and Wells knew of any fraud committed by either of the promoting corporations upon the rights of the plaintiffs, or of gross negligence or misconduct on their part equivalent in its scope and effect to fraud upon their rights, an essential requisite to the invocation of the doctrine of constructive trusts is wanting, viz.: the lack of an independent, dominant right to the moneys so acquired by an innocent holder, without knowledge, for value.

The prospectus, upon the faith of which plaintiffs claim to have invested in the stock of the Seven Stars Gold Mining Company, recited that "subscriptions will be received by the Industrial Mining and Guaranty Company, 41 Broadway, New York," (Printed Record, p. 19); that "dividends will be paid in gold quarterly from the date of allotment at the office of the Industrial Mining and Guaranty Company, No. 41 Broadway, New York, U. S. A.;" that, "Information.—Prospectuses, maps, reports and other information may be obtained from the Industrial Mining and Guaranty Company, 41 Broadway, New York," (Printed Record, p. 25); and "this form (of application) to be sent with the deposit to the Industrial Mining and Guaranty Company, 41 Broadway, New York, or any of the bankers," etc. (Printed Record, p. 28). And the fact is established in the findings of the court "that as to stock sold under the American prospectus to American stock purchasers, every contract of sale and purchase of stock of the Seven Stars Gold Mining Company was conducted by the Industrial Mining and Guaranty Company of the one part, as sellers, and by the individual subscriber to said stock, as the purchaser, on the other part; * * * and that neither John Lawler nor Ed. W. Wells was present at, nor a party to, any of said contracts." (Finding 41.)

It is beyond dispute, therefore, that the plaintiffs knew of the general agency of the Industrial Mining and Guaranty Company, and that they contracted with and paid their subscriptions to that company as the agent of the Seven Stars Gold Mining Company. This agent deposited all of the money received from the plaintiffs, with that paid in by all of the American and English subscribers to the stock of this company, together with all moneys received by it on account of its various enterprises, as a common

fund in an ordinary deposit on account in its name in the Continental Bank of New York, and checked against, disbursed and used that common fund in the course of its business. (Findings 49 and 54).

It paid from this common fund on account of operating expenses of the Hillside mines the sum of $21,004.50 prior to September 28th, 1892, when up to that time it had received from the sale of the Seven Star stock but $2,100, (Finding 55); and from this fund it paid out for operating expenses, purchase of machinery, dividends to the stockholders of the Seven Stars Company and other expenses connected with this enterprise the aggregate sum of $380,295.81, which amounted to $248,436.29 more than it received from all the American subscribers to this stock, including plaintiffs, and $127,986.84 more than the amount of money received by it from the sale of this stock, both in England and America. (Findings 57 and 54.) And the Industrial Mining and Guaranty Company distributed from that general fund during the period involved in this transaction on account of its various enterprises the full sum of $824,142.13. (Finding 49.)

We submit that when this record discloses that the plaintiffs from time to time paid their stock subscriptions to the agent of the Seven Stars Gold Mining Company, and that agent in the usual course of its business turned the funds so received into its general assets and thereupon disbursed from its general assets more than the total amount of the American stock subscriptions for and on account of the Seven Stars Gold Mining Company for purposes other than payments to Lawler and Wells under the Cowland contract, it is not a fact, nor can it be inferred, implied or construed from the facts established by this record that any money of the plaintiffs came into the hands of Lawler and Wells as a payment under the Cowland contract. And no such fact is found by the territorial court.

The Industrial Mining and Guaranty Company received from the sale of guaranteed stock to both American and English subscribers the net sum of $252,308.97, and from subscribers to the common stock $2,583.80, making a total receipt from all subscriptions to the stock of the Seven Stars Gold Mining Company of $254,892.77. (Finding 54). It expended subsequent to June 15th, 1892, for the benefit of the Seven Stars Gold Mining Company, or its stockholders, for operating expenses, purchasing machinery, payment on account of the price of the Hillside group of mines, dividends and other expenses connected with the enterprise the aggregate sum of $380,295.81, (Finding 57); and prior to June 15th, 1892, for the same purposes $12,528.87,

(Finding 59); making a total outlay by it in this enterprise for the benefit of the Seven Stars Gold Mining Company, or its stockholders, of $392,824.68. That is to say, it expended upon this enterprise $137,931.91 more than the stockholders of the Seven Stars Gold Mining Company paid into the enterprise.

Now, under this state of facts, who can say whether the $112,339.96 paid by the Industrial Mining & Guaranty Company to Lawler and Wells came from or were the moneys or property paid in by the stock subscribers, or were the moneys or property of the Industrial Mining & Guaranty Company. Much of this large expenditure for machinery and excavations may have been and doubtless was imprudently made, for there is no finding that the mining property as a whole was of any greater value after than before its contact with these speculative companies.

Upon these facts we may adopt the broad language of Lord Ellenborough in *Taylor v. Plumer,* 3 Mau. & Sel. 526, to the effect that "the product or substitute for the original thing still follows the nature of the thing itself, as long as it can be ascertained to be such, and the right only ceases when the means of ascertainment fail," without his qualification that such "is the case when the subject is turned into money and mixed and confounded in a general mass of the same description," and yet there is no place for the doctrine of implied or constructive trusts in this case.

All the payments made to Lawler and Wells under the Cowland contract—and they received no money in connection with this enterprise except such as the court has found was paid to them "on account of the purchase price of said property under the terms of the original escrow agreement" and amendments (Findings 47 and 48)—were received by them for a valuable consideration, to-wit, the consideration of making the original escrow agreement and the extensions thereof. And that agreement and the extensions having been made innocently and in good faith, the receipt of money under its terms imposed no obligation upon them to investigate or inquire where the moneys came from; nor will the receipt of such payments by them under the circumstances disclosed impress them with constructive notice of the sources from which the funds came to make the payments. Moneys received for a valuable consideration in good faith and without notice of equites from a common fund in the hands of an agent with whom they had been placed by the claimants, though in the hands of the agent they were subject to be impressed with a trust, are when so disbursed, absolved from that liability. Perry on Trust Vol. 1 Sec. 218.

## VIII.

Plaintiffs have no natural equities in the improvements or machinery placed upon the lands, for the reason that all such machinery and improvements were paid for by and from the funds of the Industrial and Mining Guaranty Company. (Finding 57.) When the improvements were made, the Industrial Company knew the title of the mines was vested in Lawler and Wells. *Steel* v. *St. Louis Smelting, etc., Co.*, 106 U. S. 432.

## CONCLUSION.

The effect of granting the relief sought by complainants is that a court of chancery shall, by its decree, take from the real owners, whose title is proclaimed by public records, a mining property confessedly worth $450,000, and vest the same in a corporation for the use of its stockholders, excluding its creditors, after that corporation has made a fair contract to buy the mining property from its real owners for $450,000, when neither the corporation nor the stockholders nor any other person had paid more than the sum of $231,139.82 on the purchase price, and when all the stockholders of the corporation together had never put into the capital stock or assets of the corporation more than $254,892.77.

When the judiciary shall have by searching found out and uncovered principles of equity and righteousness to the eager desire of an aspiring Christian civilization by which such a termination is gendered from the coition of such facts, they will have discovered a better receipt for getting something for nothing than that of the Louisiana Lottery.

In *Chilton* v. *Braiden's Admr.* 67 U. S. 458, it is said: "When one has got the estate of another, he ought not, in conscience, to be allowed to keep it without paying consideration." But before the bar the suggestion is that plaintiffs take from the defendants their property without paying for it. *Slide, etc., Mines* v. *Seymour*, 153 U. S. 509.

We respectfully submit that under the pleadings and upon the facts found and certified by the Supreme Court of the Territory of Arizona no remediable equities exist in favor of the appellants and that the decree of the Supreme Court of the Territory should be affirmed.

H. C. McDOUGAL,
W. C. SCARRITT,
*Counsel for Lawler and Wells.*

E. L. SCARRITT,
*Of Counsel.*

# APPENDIX.

In the Supreme Court of the Territory of Arizona,
January Term, 1900.

Clinton B. Wiser, C. M. Field, John Kerr, James A. Ferguson, Dorsey Neville, Mary M. Heath, John J. Miller, Henry L. Mugsford, William F. Foster, Edgar G. Miller, L. F. Hiorne, Sidney G. Law, Edward M. Smith, Harper M. Smith, Benjamin Goodman, Lester M. Crouch, John B. Clute, Katie T. Courtney, H. S. Anders, and Cecil Quentin, Appellants,

vs.

John Lawler, Ed. W. Wells, Seven Stars Gold Mining Company, Industrial Mining and Guaranty Company, and John Griffin, Receiver, Appellees.

Appeal from the District Court of Yavapai County, Hon. Webster Street, Judge.

## FINDINGS OF FACT.

The supreme court of the Territory of Arizona do hereby, in the above-entitled proceeding, find the following facts:

1. That on the 12th day of May, 1892, ever since and now, the defendants, John Lawler and Ed. W. Wells, were and are the owners of the legal title to the mines and mining claims located in the Eureka mining district in Yavapai county, Arizona, known as "Hillside," "Happy Jack," "Contact No. 1," "Contact No. 2" and "Camp;" and locations known as "Midnight," "Morning Glory," "Water," "Hidden Treasure," "Sucker," "Side," "Purple Rose," "Southern Belle," "Robert E. Lee," "Lucky Cuss," "Centipede" and "Good Enough," which are hereby denominated and will be hereinafter referred to as the "Hillside group of mines." The muniments showing such title in Lawler and Wells were then, and ever since have been and are now of record in the office of the county recorder of Yavapai county, Territory of Arizona, where said mines are situate; that John Lawler and Ed. W. Wells were and are cotenants in said group of mines, the said Lawler owning an undivided three-fourth interest therein and the said Wells owning an undivided one-fourth interest therein.

2. That prior to May 12th, 1892, the defendants, John Lawler and Ed. W. Wells, offered said mines for sale at the purchase price of four hundred and fifty thousand dollars ($450,000) cash.

3. That a few days prior to May 12th, 1892, H. H. Warner visited this group of mines with T. A. Rickard, a mining expert, and examined the same. After such examination he contracted for the purchase of said group from Lawler and Wells for the sum of $450,000, paying $20,000 in cash, the remainder payable in installments, in accordance with the terms of an escrow agreement entered into on May 12th, 1892, by and between John Lawler and Ed. W. Wells on the one part and Charles Cowland on the other part, which provided, among other things, that "the deed conveying the mine to Cowland be annexed to said agreement and shall be held in escrow with the Bank of Arizona, at Prescott, Arizona, to be held and delivered by the bank upon the following conditions only: The bank to deliver the deed to Cowland, his heirs or assigns, upon his or their paying or causing to be paid, as herein provided for, the full sum of $450,000. In case of failure of said Cowland in making or causing to be made any of said payments of money at the time or times and in the manner herein stated, then the said Bank of Arizona, upon demand being made thereupon by said Lawler and Wells, shall deliver said deed to Lawler and Wells, or their representatives, and in the event of such failure of said Cowland to make or cause to be made any of the said payments, then all payments of money theretofore made by said Cowland on the purchase price of said property shall be forfeited by him; and he agrees and covenants with said Lawler and Wells that all money paid by him as purchase-money on said property shall belong to them and be retained by them as liquidated damages accruing to them for the failure of said Cowland to purchase, take and pay for said property as hereinabove stated and stipulated, and the said Lawler and Wells shall be at once released and discharged from any further duty or obligation to sell and covey the property. It is further agreed that said Cowland, by himself and his agents, may at once enter into and upon said property, and take possession thereof, subject, however, to the legal possession of said Lawler and Wells; and the said Cowland may use, possess, explore, develop, work and operate the said property, and all the proceeds derived from such use, development, operation and working of the same and from the ores taken therefrom shall be at once paid to Lawler and Wells, and be applied to and credited upon the payment hereinabove stipulated to be made by said Cowland. It is further agreed that said Lawler and Wells shall retain and remain in possession of said property until the full payment of purchase price shall be made, and Cowland recognizes and agrees to such possession, and any and all use made of, by or on the part of the said Cowland shall be

considered as said Lawler and Wells' possession as aforesaid. Lawler and Wells shall not work the said property, nor operate the said mine, nor interfere with the use, working and operation of said Cowland. It is further agreed that if the said Cowland shall fail to make any of the payments as above stated, and shall fail to take and pay for said property as above stated, that all improvements made on said property and all development made thereon and therein, and all ores taken therefrom shall be the property of the said Lawler and Wells, and shall not be removed by the said Cowland, and the costs and expenses thereof shall in no manner be charged against said Lawler and Wells or against said property; that said Cowland shall have the right to work and operate the machinery and to use the property mentioned in said deed during the continuance of said contract and until the forfeiture thereof on his part; and in case of a forfeiture of contract on the part of said Cowland by failure to comply with any of the provisions thereof, or to make any payment as herein provided, then he agrees to at once surrender and deliver possession of said property to said Lawler and Wells."

On the 12th day of May, 1892, and contemporaneously with the execution of said agreement, a deed to the said Charles Cowland was executed by John Lawler and Ed. W. Wells and wife particularly describing the said Hillside group of mines, and conveying the same to Cowland for the purchase price of $450,000. Contemporaneously with the signing of said agreement and deed, the said H. H. Warner signed an instrument in writing, guaranteeing that the said Charles Cowland will carry out and perform the conditions of said agreement above referred to. Afterwards and on the same day, the agreement, deed and instrument of guarantee were by the said Warner, John Lawler and Ed. W. Wells deposited with the Bank of Arizona at Prescott, as the escrow holder thereof, in accordance with the terms, conditions and provisions contained in the said escrow agreement.

4. That while the escrow agreement and deed were executed in the name of Charles Cowland, the said Cowland was the agent of H. H. Warner, and Warner was the real party in interest in the transaction.

5. That the said escrow agreement, deed and guaranty were never recorded, but remained in the possession of the bank, as the escrow holder thereof, until November 10, 1893.

6. That at the time of the execution of said escrow agreement, "Exhibit A," and said deed, "Exhibit B," the defendants, John Lawler and Ed. W. Wells, knew that H. H. Warner contemplated the forming of a corporation to operate said group of

mines and eventually vest the title thereof in said corporation, in compliance with the terms of said escrow agreement.

7. That on or about the 15th day of May, 1892, John Lawler delivered to T. A. Rickard, as the agent of Charles Cowland, the occupation of said group of mines under the terms and conditions contained in the license embodied in said escrow agreement, "Exhibit A;" that from May 15, 1892, to the 15th day of June, 1892, the funds necessary to carry on the operations of said mines under the administration of said Rickard, were furnished by the H. H. Warner Investment Company, a corporation, of which the said H. H. Warner was during that time the president, the amount of which said funds does not appear in the evidence.

8. That on the 14th day of June, 1892, said H. H. Warner, Wm. M. Earl, Wm. R. Kennard, Francis B. Bowen and Charles Cowland incorporated, under the laws of the State of New Jersey, the Industrial and Mining Guaranty Company, with a capital of five hundred thousand dollars ($500,000), divided into five thousand (5,000) shares of the par value of one hundred dollars ($100) each, and on June 15, 1892, that corporation was organized with said incorporators as directors, with H. H. Warner as president; Wm. R. Kennard, vice-president; Wm. M. Earl, secretary, and Francis B. Bowen as treasurer; for the purpose of handling mines and industrial enterprises, buying and selling stock, etc., etc.

9. That on the 15th day of June, A. D. 1892, said Charles Cowland made and delivered to the Industrial and Mining Guaranty Company a written assignment of all his right, title and interest in and to the escrow agreement, "Exhibit A" aforesaid, a true copy of which said written assignment is attached to said answer and marked "Exhibit D;" that contemporaneously with the execution and delivery of said written assignment, "Exhibit D," the said Charles Cowland made and delivered to said Industrial and Mining Guaranty Company, a deed of conveyance, a true copy of which said conveyance is attached to said answer and marked "Exhibit F;" that contemporaneously with the execution and delivery of said assignment, "Exhibit D," and said conveyance, "Exhibit F," the said H. H. Warner made and delivered to said Industrial and Mining Guaranty Company a written consent to the making of said assignment and deed, "Exhibits D and F," a true copy of which said written consent is attached to said answer and marked "Exhibit E;" that at the time the said Industrial and Mining Guaranty Company took and received said assignment, "Exhibit D," said written consent, "Exhibit E," and said conveyance, "Exhibit F," from the said Charles Cowland, to-wit: On June 15,

1892, the said Industrial and Mining Guaranty Company had full knowledge and notice of the terms, conditions and provisions of the escrow agreement, "Exhibit A," aforesaid, and then and there by resolution of the board of directors of said Industrial and Mining Guaranty Company, the said Industrial and Mining Guaranty Company assumed all the covenants, conditions and agreements in the said escrow agreement, "Exhibit A," aforesaid, on the part of said Charles Cowland to be kept and performed; and further, by said resolution, said Industrial and Mining Guaranty Company promised to carry out and perform said escrow agreement, "Exhibit A," and all the terms, conditions and covenants therein contained, on the part of said Cowland to be performed, and make the payments for said mines, mining properties and other goods and chattels provided for in said escrow agreement, "Exhibit A," and procure said deed for the same, then in the hands of the Bank of Arizona.

10. That on the 15th day of June, 1892, the said T. A. Rickard delivered to the Industrial and Mining Guaranty Company the occupation of said Hillside group of mines, and on that day the said company entered into occupation of said group of mines with full knowledge and notice of the terms, conditions and provisions of the escrow agreement, "Exhibit A," aforesaid; that said company remained in occupation and operation of said Hillside group of mines from June 15, 1892, to and until the first day of October, 1892.

11. That on the 15th day of August, 1892, said H. H. Warner, William M. Earle, and one R. S. Hudspeth, as incorporators, incorporated the Seven Stars Gold Mining Company, under the laws of the State of New Jersey, with a capital of three million dollars ($3,000,000), divided into six hundred thousand (600,000) shares, of five dollars ($5) each, wherein, among other things, said corporation was authorized to hold, operate and convey mines; that afterwards, and on the 24th day of September, 1892, the said Seven Stars Gold Mining Company was organized by the election of the following-named directors, to-wit: Warner Miller, Hulbert H. Warner, J. Clifford Richardson, J. Herbert Jefferis, Arthur G. Yates, John W. Vrooman, B. E. Chase, Clinton B. Wiser, and Robert S. Hudspeth; with H. H. Warner as president, Robert S. Hudspeth as vice-president, and Harold J. Footner as secretary and treasurer.

12. That on the 10th day of September, 1892, the Industrial and Mining Guaranty Company, through its board of directors, by a resolution duly adopted, did offer to sell and convey all its right, title and interest in the following mining properties, a portion of which is described in the escrow agreement and deed, "Exhibits A and B" aforesaid, to-wit: The Seven Stars, Happy Jack,

Contact No. 1, and Contact No. 2, mines; also, the claim known as Camp and the locations known as Mescal, Elwood, Midnight, Waterfall and Boulder, to a company formed or to be formed, and known as the Seven Stars Gold Mining Company, upon said company showing that it had placed two hundred thousand dollars ($200,000) for working capital in its treasury, and upon receiving two million eight hundred thousand dollars ($2,800,000) in cash or stock of the Seven Stars Gold Mining Company.

13. That on the first day of October, 1892, the Industrial and Mining Guaranty Company placed the Seven Stars Gold Mining Company in the occupation of said Hillside group of mines, and on that day the latter company entered into said occupation, with full knowledge and notice of the terms, conditions and provisions contained in the escrow agreement, "Exhibit A," aforesaid, and with full knowledge and notice of the resolution of the board of directors of the Industrial and Mining Guaranty Company referred to in finding 12 herein.

14. That the Industrial and Mining Guaranty Company, acting as the duly authorized agent of the Seven Stars Gold Mining Company, under date of September 24, 1892, issued a prospectus known as the "American prospectus" in aid of and to promote the sale of the stock of the Seven Stars Gold Mining Company, a true copy of which said prospectus is attached to the original complaint herein and marked "Exhibit C;" that some 300,000 of said American prospectuses accompanied by a map and application for subscription to stock, copies of which are attached to the original complaint and likewise marked "Exhibit C," were circulated by mail throughout the United States, the circulation of which said prospectus and blanks commenced about the 20th of September, 1892.

15. That on October 3, 1892, the Industrial and Mining Guaranty Company, as the duly authorized agent of the Seven Stars Gold Mining Company, by a resolution of the board of directors of said Industrial and Mining Guaranty Company duly adopted, did authorize and direct an English prospectus to be issued, a true copy of which said prospectus is attached to the minutes of the Industrial and Mining Guaranty Company, under date of October 3, 1892, and contained in "Exhibit 73," attached to the deposition of John Griffin on file herein; that the prospectus in this paragraph mentioned was never circulated in England or elsewhere.

16. That a prospectus was issued and circulated in England without the authority of the board of directors of the Industrial and Mining Guaranty Company or of the Seven Stars

Gold Mining Company, a true copy of which said prospectus so circulated in England is attached to the original complaint herein and marked "Exhibit D;" this prospectus was prepared, supervised and circulated by Charles Cowland; the descriptive matter in this prospectus was based upon data furnished him by the officers of the Industrial and Mining Guaranty Company; the circulation of this prospectus commenced about the 5th day of October, 1892, and amounted to about 80,000 copies; accompanying each copy of this prospectus was a map and application for subscription for stock, true copies of which are attached to the original complaint herein and marked "Exhibit C;" neither John Lawler nor Ed. W. Wells had any knowledge or information that this prospectus had been or was being circulated in England, or had any knowledge or notice of its contents until some time in the month of October, 1893.

The distributed English prospectus was the same as was attached to the complaint. This prospectus as it there appears was approved by the directors of the industrial company, with this exception: The third paragraph of the prospectus approved read: "The mines are situated in the Eureka mining district, Yavapai county, Ariz.," while said paragraph of the prospectus as finally printed and distributed in England read: "The mines *owned by the company are* situated in the Eureka mining district, Yavapai county."

17. That on May 15, 1892, at the Hillside mines, the defendants, Lawler and Wells, caused to be delivered to Mr. T. A. Rickard a report previously made upon said mines, known in the evidence as the "Blauvelt report," together with a map of the underground workings of said mines as such workings then existed, known in the evidence as the "Blauvelt map;" also, copies of the smelter and milling returns of ores which had been previously shipped from said mines and reduced, known in the evidence as "Smelters' returns;" that on September 28, 1892, at the request of H. H. Warner, said John Lawler sent by express to H. H. Warner, at New York City, the originals of said smelter and milling returns.

18. That on August 27, 1892, defendant Wells visited the office of the Industrial and Mining Guaranty Company, at 41 Broadway, New York city, and while there had an interview with H. H. Warner, president of that company and of the Seven Stars Gold Mining Company; that during that interview nothing was said to Mr. Wells about the plans of the Seven Stars Gold Mining Company nor of the Industrial and Mining Guaranty Company, nor the issuance and circulation of any prospectus.

19. That the section of the underground workings shown upon the map accompanying the prospectus and being one of the "Exhibits C" attached to the original complaint, is a copy of the Blauvelt map, with the additions of the outlines of the underground workings made by T. A. Rickard, as the agent of Cowland, during his administration, and by the Industrial and Mining Guaranty Company during its operations of said property; that the original of the surface outlines of the mining claims and town site appearing upon said map, "Exhibit C," was prepared by Alexander O. Brodie, while in the employ of the Industrial and Mining Guaranty Company, and without the knowledge of Lawler and Wells; that the original Brodie map contained the outlines of all the mining claims described in the escrow deed, "Exhibit B," together with other mining claims bonded by said Industrial and Mining Guaranty Company, and located by said Brodie for the benefit of the Seven Stars Gold Mining Company; that the said map, "Exhibit C," contains an outline of only those mining claims and town site mentioned in the resolution of the Industrial and Mining Guaranty Company, dated September 10, 1892, and referred to in finding 12 herein, together with the Boulder, a claim bonded from Joe Howell, and claims located by Mr. Brodie for the benefit of the Seven Stars Gold Mining Company; and, together with the Hillside patented claims mentioned in said escrow deed, "Exhibit B;" that defendant Lawler, on his visit to New York, August 30, 1892, saw the original Brodie map hanging on the wall of the office of said companies in New York; that the original Brodie map of which defendants' map, "Exhibit A" in evidence, is a true copy, had endorsed thereon the words, to-wit: "Plat of the Hillside and Adjoining Claims;" and said quoted words were written upon the original draft of the distributed map, "Exhibit C," attached to the complaint; that afterwards, without the knowledge of said Lawler, said quoted words were before distribution, changed on said map, "Exhibit C," to the words, to-wit: "Map of group of mines belonging to the Seven Stars Gold Mining Company."

20. That on and between the 30th day of August, 1892, and the 3rd day of September, 1892, the defendant, John Lawler, was in the offices of the Industrial and Mining Guaranty Company in New York city and there became aware that an American prospectus was being prepared for circulation for the purpose of promoting the sale of the stock of the Seven Stars Gold Mining Company, and, that the facts and statements contained in the Blauvelt report and map and copies of smelters' returns, hereinbefore mentioned, were being used as a basis of the description

of the said Hillside group of mines to be contained in said proposed American prospectus.

21. That on October 28, 1892, H. H. Warner, in Prescott, represented to Lawler and Wells that he was unable to place securities that he held, in time to meet the payment of that portion of the purchase price falling due November 12, 1892; and, relying upon said representation and request of Warner, Lawler and Wells, on October 28, 1892, agreed to an extension of the time of payment under the agreement of May 12, 1892, and provided that the original agreement remain in full force, except as to said modification touching the time of payment.

22. That on May 8, 1893, H. H. Warner executed a general assignment of his property for the benefit of his creditors to Job E. Hedges.

23. That on May 11, 1893, Lawler and Wells, knowing of the assignment of Warner, executed an agreement with Charles Cowland, stipulating that the payment mentioned in the original escrow agreement as falling due on May 12, 1893, might be made by said Cowland as follows: $9,098 in cash, and $4,500 to be paid on the first day of June, 1893, and the like sum to be paid on the first day of each of the following months, viz: July, August, September, October and November, 1893.

24. That a part of the consideration for the execution of the written instrument "Exhibit K," attached to said answer, was the issuance and delivery to said defendants Lawler and Wells of $50,000 per value of the guaranteed capital stock of the Seven Stars Gold Mining Company and of the appointment of John Lawler as manager of the operations of said Hillside group of mines.

25. That on May 11, 1893, the defendant, John Lawler, was appointed by the Seven Stars Gold Mining Company, manager of the operations of said Hillside group of mines, and said defendant, John Lawler, on May 13, 1893, entered upon his duties as such manager.

26. On May 20, 1893, Lawler received notice in writing that remittances on account of the Cowland contract were being made from money received from the sale of the stock of the Seven Stars Gold Mining Company.

27. Before July 25, 1893, Lawler had personal knowledge that persons were being induced orally to purchase stock in the Seven Stars Gold Mining Company by representations as to the merits of the mining property in question.

28. The Seven Stars Gold Mining Company had no property other than its interest in said mines and no source of income other than the sale of its stock.

29. That on the 18th day of August, 1893, the chancery court of the State of New Jersey, in a certain action for that purpose then pending in said court, duly appointed defendant, John Griffin, as receiver of said Industrial and Mining Guaranty Company and of the Seven Stars Gold Mining Company, and thereupon on that day the said John Griffin duly qualified and entered upon his duties as such receiver.

30. That the Seven Stars Gold Mining Company from and including October 1, 1892, until and including the 17th day of August, 1893, continuously occupied and operated the said Hillside group of mines under and by virtue of the occupation thereof so given to it by the Industrial and Mining Guaranty Company as aforesaid, with full knowledge and notice of the terms, conditions, privileges and provisions contained in the original escrow agreement, "Exhibit A" aforesaid.

Remittances to the Bank of Arizona for Lawler and Wells after November 1st, 1892, were placed to the credit of the Seven Stars Gold Mining Company.

31. That on September 1, 1893, neither Charles Cowland nor the said receiver nor the plaintiffs nor any one of them paid or offered to pay to Lawler and Wells the sum of $4,500, payable on that date, according to the terms and conditions of the said escrow agreement and modifications thereof; nor has Cowland, nor has any one for him paid said sum since said date; nor has Cowland, nor has any one for him paid or caused to be paid, any portion of any purchase-money of said property, falling due or payable on or after the first day of September, 1893, according to the terms and conditions of said escrow agreement of May 12, 1892.

32. That on the 10th day of September, 1893, the defendants, John Lawler and Ed. W. Wells, as owners of the legal title to the said Hillside group of mines, and claiming to exercise their rights under the original escrow agreement, "Exhibit A" aforesaid, and the amendments, "Exhibit I and K" attached to said answer, entered into possession of said Hillside group of mines and from thence forward to and until September 30, 1897, the day of the date of the appointment of the first receiver herein, continuously remained in the exclusive possession of said mines.

33. On the 10th day of November, 1893, the Bank of Arizona, as escrow holder of the escrow agreement and deed, dated May 12, 1892, at the request of Lawler and Wells, redelivered said deed, according to the terms of the said escrow agreement to the said Lawler and Wells.

34. That the defendants, John Lawler and Ed. W. Wells, had no knowledge or notice of the execution by Charles Cowland to the Industrial and Mining Guaranty Company, of the written assignment, "Exhibit D," the conveyance, "Exhibit F," the written consent thereto of H. H. Warner, "Exhibit E," and the resolution of the Industrial and Mining Guaranty Company accepting said instruments, as mentioned and described in finding 9 herein, until after the commencement of this suit.

35. That defendants, John Lawler and Ed. W. Wells, had no knowledge or notice of the adoption of the resolution of the Industrial and Mining Guaranty Company dated September 10, 1892, offering to sell a portion of the property in controversy with other property, to a company formed or to be formed and known as the Seven Stars Gold Mining Company and more particularly described in finding 12 herein, until after the commencement of this suit.

36. That on the 11th day of May, 1893, defendant John Lawler was, by the board of directors of the Seven Stars Gold Mining Company, appointed a director of said corporation to fill a vacancy then existing; that said Lawler never entered upon the duties of said office and had no knowledge or notice of said appointment until long after the commencement of this action.

37. That defendants John Lawler and Ed. W. Wells, in the month of October, 1892, became aware that the American prospectus, "Exhibit D" to the original complaint, was being distributed by the Industrial and Mining Guaranty Company.

38. That the defendants, John Lawler and Ed. W. Wells, or either of them or any person in their or either of their behalf did not at any time protest against the preparation or circulation of the prospectuses, maps and applications for subscriptions to stock herein mentioned, and they did not at any time or at all attempt in any way to give any notice of their rights in the Hillside group of mines to any of the plaintiffs or purchasers of the stock of the Seven Stars Gold Mining Company, except as such notice might be imputed to the said plaintiffs and stock purchasers through and by virtue of the recorded title in said defendants of the property in controversy, as in finding one herein set out.

39. That plaintiff, Clinton B. Wiser, was a director of the Seven Stars Gold Mining Company, and his name appeared on the prospectus as such director, and he assisted in the circulation of the American prospectus and in the sale of the stock of that corporation, and during all that time he had knowledge and notice that the title to the property in controversy was not vested in the Seven Stars Gold Mining Company.

40. That the Seven Stars Gold Mining Company duly authorized the Industrial and Mining Guaranty Company to act as its agent in the sale of stock, and all of the stock of the Seven Stars Gold Mining Company which was at any time sold under the American prospectus was so sold by the Industrial and Mining Guaranty Company, and the latter received from the stock purchasers all the moneys which were paid on account of the purchase price of such stock.

41. That as to stock sold under the American prospectus to American stock purchasers, every contract of sale and purchase of stock of the Seven Stars Gold Mining Company was conducted by the Industrial and Mining Guaranty Company on the one part, as sellers, and by the individual subscriber to said stock as purchaser, on the other part; that as to stock sold under the English prospectus in England, every contract of sale and purchase of said stock was conducted by Tarbutt & Quentin on the one part as sellers, and by the individual subscriber to said stock as purchaser, on the other part; and that neither John Lawler nor Ed. W. Wells was present at, nor a party to, any of said contracts.

42. That 21 out of a total aggregate numbering about 500 of the purchasers of stock of the Seven Stars Gold Mining Company have testified in this case; and, with the exception of witness Wiser, during all of the time of their and each of their (the said witnesses') dealings with the Industrial and Mining Guaranty Company in the purchase, subscription and payment for such stock:

(*a*) They each relied upon the statements contained in the prospectus and maps as distributed, and they believed from the reading of the same that the Seven Stars Gold Mining Company owned the mines and properties therein mentioned and referred to;

(*b*) All of the said witnesses, including witness Wiser, and with the exception of witness M. J. Riordan, did not then know either of the defendants, John Lawler or Ed. W. Wells; and

(*c*) That said witnesses, including witnesses Wiser and Riordan, did not before, or at the time of their said purchases, subscriptions or payments, have any communication with said defendants, or either of them, concerning any matter in issue herein.

43. That the subscribers to the stock of the Seven Stars Gold Mining Company did not at the time of their individual subscriptions to, or at the time of their several payments for said stock, have any knowledge or notice of any of the following matters:

(*a*) That Lawler and Wells on May 12, 1892, knew that

H. H. Warner proposed to form a corporation to operate said group of mines and eventually take the title thereto, as in finding 6 herein set forth;

(*b*) That said defendants had furnished the Blauvelt report and map, or the copies of and original smelters' returns as herein mentioned, or that the same were being, or had been, used as data for said prospectus, and the maps distributed therewith;

(*c*) That John Lawler and Ed. W. Wells had visited the offices of the Industrial and Mining Guaranty Company, in New York, in August and September, 1892, or of any matter or thing occurring thereat; or,

(*d*) That said defendants knew that said prospectus and maps were being distributed.

44. That the subscribers to the capital stock of the Seven Stars Gold Mining Company, in making their several subscriptions therefor and payments thereon, did so without any knowledge of and without relying on anything said or done, or omitted to be said or done, in the premises by the said Lawler and Wells or either of them.

45. That John Lawler and Ed. W. Wells did not, before or at the time of any subscriptions to the capital stock of the Seven Stars Gold Mining Company or payment on account of said subscriptions, make any representations to or communicate with any subscriber of said stock concerning any matter or thing in issue herein.

46. That from the gross proceeds of the operations of the Hillside group of mines during its operation by the Industrial and Mining Guaranty Company, there was deposited in the Bank of Arizona to the credit of Lawler and Wells on account of the purchase price of said property, in accordance with the terms of said escrow agreement, "Exhibit A" aforesaid, the sum of $19,987.61; that during the operations of said properties by the Seven Stars Gold Mining Company a like deposit was made for a like purpose, amounting to the sum of $47,812.25; aggregating in all $67,799.86.

47. That on May 12 and 24, 1892, H. H. Warner paid to the defendants, Lawler and Wells, on account of the purchase price of said property, the aggregate sum of $51,000; that there was paid on and between November 12, 1892, and August 4, 1893, to the defendants, John Lawler and Ed. W. Wells, on account of the purchase price of said property under the terms of the original escrow agreement, "Exhibit A" aforesaid, and the amendments "I and K" aforesaid, the aggregate sum of $112,399.96; and said

sum was credited to Lawler and Wells on the books of the Bank of Arizona on the dates and in the amounts as follows, to-wit:

| | | |
|---|---|---|
| Nov. 12, 1892, | Bank of Arizona. ..... | $35,000 |
| Nov. 12, 1892, | Park Nat. Bank, New York..... | 23,500 |
| Dec. 9, 1892, | Bank of Arizona. ..... | 7,000 |
| Dec. 9, 1892, | Bank of Arizona. ..... | 12,500 |
| Dec. 9, 1892, | Bank of Calif., San Francisco..... | 12,500 |
| Dec. 9, 1892, | Bank of Calif., San Francisco..... | 4,500 |
| Feb. 11, 1893, | Laidlaw & Co., New York..... | 4,500 |
| Feb. 11, 1893, | Bank of Arizona. ..... | 1,639.96 |
| June 3, 1893, | Laidlaw & Co., New York..... | 4,500 |
| June 5, 1893, | Laidlaw & Co., New York..... | 2,200 |
| Aug. 4, 1893, | Bank of Arizona. ..... | 4,500 |

48. That the payments of November 12, and December 9, 1892, and on February 11 and June 5, 1893, were made in the following manner, to-wit: The treasurer of the Industrial and Mining Guaranty Company drew a check for each payment on its common fund in the Continental National Bank of New York, which said checks were payable as follows, to-wit: "To the order of Charles Cowland or Laidlaw & Company" (or, "to the order of Charles Cowland or the Park National Bank," as the case was;) "for telegraphic transfer to the Bank of California" (or, "the Bank of Arizona" as the case was) "for credit to Lawler and Wells on account of the Cowland contract," which said checks were collected by the payee and the moneys received therefrom, transmitted in the usual course of business to the Bank of Arizona and there placed to the credit of Lawler and Wells on account of the purchase price of said property, in accordance with the terms of the original escrow agreement, "Exhibit A," and the amendments thereof.

49. That during the life of the Industrial and Mining Guaranty Company it was engaged in promoting sundry mining, railroad and industrial enterprises, including the business transactions of the Seven Stars Gold Mining Company; that during the time it received and disbursed the sum of $824,142.13; that from June 15, 1892, to and including August 1, 1893, the moneys which it received and disbursed on account of its various enterprises were all deposited in its name in a common fund in the Continental National Bank of New York, and checked against, disbursed and used by said Industrial and Mining Guaranty Company in its various business enterprises as required therein, excepting the sum of $111,724.23, of which sum $67,799.86 were the gross proceeds of

ore from the Hillside group of mines, and the further sum of $43,924.37, which was composed of $224.37, moneys received prior to May 11, 1893, from the sale of Seven Stars stock, and the remainder from loans obtained by said company, subsequent to May 11, 1893.

50. That the defendants, John Lawler and Ed. W. Wells did not at any time, prior to the time of the commencement of this action, have any knowledge or notice that any moneys received by them on account of the purchase price of the Hillside group of mines as provided for in the original escrow agreement of May 12, 1892, came from or was the moneys or any part of the moneys which any one or more of the purchasers of the stock of the Seven Stars Gold Mining Company had paid in to the Industrial and Mining Guaranty Company on account of the purchase price of such stock.

51. That the defendants Lawler and Wells were not promoters of or in anywise interested in the organization of the Industrial and Mining Guaranty Company or of the Seven Stars Gold Mining Company, nor in the issuance or circulation of the prospectus, nor in the issuance and sale of the capital stock of either of said companies, or in the proceeds thereof.

52. No certificates of stock of the Seven Stars Gold Mining Company were ever issued on account of the stock subscriptions made in England.

53. That after the 11th day of May, 1893, the Industrial and Mining Guaranty Company received the sum of $500 and no more, on account of the sale of Seven Stars stock.

54. That the amount of moneys received by the Industrial and Mining Guaranty Company from the purchasers of guaranteed stock of the Seven Stars Gold Mining Company, was as follows: From the American subscribers, $131,859.52; from the English subscribers, $125,852.33; aggregating $253,128.05, of which $819.08 was returned by the Industrial and Mining Guaranty Company to certain of the stock subscribers to said guaranty stock, and their stock subscriptions cancelled, making the aggregate of money retained by the Industrial and Mining Guaranty Company from the sale of guaranteed stock, $252,308.97. There was received by the Industrial and Mining Guaranty Company, $2,583.80 from the sale by it of the common stock of the Seven Stars Gold Mining Company.

55. That on September 28, 1892, the Industrial and Mining Guaranty Company received its first moneys, amounting to $2,100, from the sale of the guaranteed stock, and during its operations of said Hillside group of mines prior to September 28, 1892, it had

paid out on account of the operating expenses of said property the sum of $21,004.50.

56. The Seven Stars Gold Mining Company at its New York office did not keep any books of account of receipts and expenditures of moneys, but all accounts of the receipts and expenditures of money in the operations and expenditures of the Industrial and Mining Guaranty Company and the Seven Stars Gold Mining Company during their respective operations of the Hillside group of mines, were kept by the Industrial and Mining Guaranty Company in its own books of account.

57. That the Industrial and Mining Guaranty Company, between the 15th day of June, 1892, and the 18th day of September, 1893, paid out for operating expenses, purchase of machinery, purchase price of the Hillside group of mines, dividends and other expenses—all connected with this enterprise—the aggregate sum of $380,295.81, which amounted to $127,986.84 more than the amount of moneys received by it from the sale of Seven Stars guaranteed stock, and $60,186.98 more that the aggregate amount of moneys received by it from the sale of Seven Stars guaranteed stock, and from the net proceeds of ore from the Hillside group of mines, paid into the Bank of Arizona on account of the purchase price of said mines.

58. That during the operations of the Hillside group of mines by the Seven Stars Gold Mining Company, there was expended by the Industrial and Mining Guaranty Company, for costs of operations, improvements, supplies and machinery, the sum of $112,411.32.

59. That the amount paid on account of machinery purchased and placed upon the Hillside group of mines by the Industrial and Mining Guaranty Company during the operations of the Seven Stars Gold Mining Company was the sum of $12,528.87, of which machinery to the value of $5,000 was sold under judicial sale by creditors of the Seven Stars Gold Mining Company after June 1, 1893.

60. That on and between January 18, 1893, and May 10, 1893, the Industrial and Mining Guaranty Company paid out as and for dividends on stock sold of the Seven Stars Gold Mining Company, the sum of $11,533.07 to the then various holders of the capital stock of the Seven Stars Gold Mining Company.

61. That the stockholders, nor any one of them, did not, before the commencement of this suit return, or offer to return, to the Seven Stars Gold Mining Company his stock, or any part thereof; and said stockholders nor any one of them, did not, prior to the commencement of this action, return or offer to return, his

or their portion of the dividends received by him or them from the Industrial and Mining Guaranty Company.

62. That there never was any meeting duly called and held of the stockholders of said Seven Stars Gold Mining Company; that on April 4, 1894, several stockholders representing themselves and about 300 other stockholders, voluntarily met at Jersey City, N. J., and there made demand upon John Griffin, receiver, as aforesaid, to commence this suit, and he refused so to do.

63. That on and between September 10, 1893, and September 30, 1897, John Lawler and Ed. W. Wells received from the operations of said Hillside group of mines the sum of $37,376.86, and disbursed in such operations during that time, the sum of $35,658.93.

64. That between the 17th day of November, 1893, and the time of commencing this action, the plaintiffs, or said receiver, or any one of them, or either of them, did not make any demand upon said John Lawler and Ed. W. Wells, or either of them, for the possession of the properties in controversy herein, or any part thereof.

WEBSTER STREET, *C. J.*,
FLETCHER M. DOAN, *A. J.*,
GEO. R. DAVIS, *A. J.*,
*Supreme Court, Territory of Arizona.*

No. 651. In the Supreme Court of the Territory of Arizona. *Wiser, et al.* v. *Lawler, et al.*, Findings of Fact. Filed March 23d 1901.

THOMAS GRINDELL, Clerk.

Office Supreme Court U. S.
FILED
MAR 23 1903
JAMES H. McKENNEY,
Clerk.

IN THE

# SUPREME COURT

OF

# THE UNITED STATES

OCTOBER TERM, 1902.

CLINTON B. WISER, ET AL.,
*Appellants,*
*vs.*
JOHN LAWLER, ET AL.,
*Respondents.*

No. 174.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

## ANSWER TO APPELLANTS' REPLY BRIEF.

H. C. McDOUGAL,
W. C. SCARRITT,
*Counsel for Lawler & Wells.*

E. L. SCARRITT,
*Of Counsel.*

(18,287)

IN THE

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JOHN LAWLER, ET AL.,
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**No. 174.**

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## ANSWER TO APPELLANTS' REPLY BRIEF.

The fact is not disclosed or established by this record that Law- and Wells received one cent of the money paid by the American subscribers to the stock of the Seven Stars Gold Mining Company. It is found that $131,859.52 of the money of the American subscribers went into the treasury of the Industrial Mining & Guaranty Company (Finding 54). But it is also shown that during the period covered by this transaction the full sum of $842,142.13 was received and disbursed by that company (Finding 49), and that it paid out for

purposes connected with this enterprise and which was doubtless chargeable as a debt against the Seven Stars Company the sum of $380,295.81 (Finding 57 ).

Now the obligation was upon the Industrial Mining & Guaranty Company to pay the price of this mine (Finding 9, and Exhibit D, Printed Record p. 91), and there was no contractual obligation, so far as the record shows, upon the Seven Stars Company to pay for it.

This being the case and it nowhere appearing from the record that the Gold Mining Company paid a dollar of the money received by Lawler and Wells on account of the price, and no facts being found from which the law would imply that the money paid by the American subscribers for their stock came into the hands of Lawler and Wells, the complainants have failed to establish the first requisite to a cause of action to impress property in the hands of Lawler and Wells with a trust. The contract was, as between the Industrial Mining & Guaranty Company and the Seven Stars Company, that the Industrial Company should pay for the mine and convey it to the Seven Stars Company, and in consideration thereof the Seven Stars Company should show that it had $200,000 in its treasury for a working capital and should turn over to the Industrial Company shares of its capital stock aggregating a par value of $2,800,000.

It does not appear from the record either expressly or inferentially, whether the advancements made by the Industrial Mining & Guaranty Company for the benefit of the Seven Stars Company to pay the expense of operating the mine and to make payments on the purchase price, etc., were to be charged to the account of the Seven Stars Company or not. There being no obligation on the part of the Seven Stars Company to pay for the mine, no presumption will arise that the $131,859.52 realized from the American subscribers was expended for that purpose; no such presumption will arise for the further reason that the Industrial Company expended nearly three times that sum for other l gitimate purposes connected with this enterprise, to-wit, $380,295.81. The appellants may sue the other recipients of that fund and assert with equal reason as they do in the present action that the recipients of the fund hold the amount received impressed with a trust in favor of the complainants. The presumption, if such a one can be invoked in the case at bar, would be just as strong in pursuing each of the other two-thirds of the $380,295.81, that the money so received by

the respective recipients was the property of the American subscribers to the stock.

The obligation of the Industrial Company to pay the price of this mine being upon it, what is to restrain the complainants from pursuing the general assets of the Industrial Company, whether in the treasury or elsewhere, and impressing a lien thereon to the amount of $131,859.52 as a trust in favor of the American subscribers. We will confess that if such a suit were brought, and the complainants should invoke a rule of presumption to the effect that American subscribers having paid their subscriptions to the Industrial Company as the agent of the Seven Stars Company, the Industrial Company being under express contractual obligation to pay for the Hillside group of mines and the Seven Stars Company being under no obligation to do so, the law would infer that the Industrial Company applied its own funds to discharge this sum which it had agreed to pay Lawler and Wells, and that the corporate assets remaining would presumptively be held to be a trust fund paid to the Industrial Company and received by that company with notice of equities.

In Finding 30 it is said, "Remittances to the Bank of Arizona after November 1st, 1892, were placed to the credit of the Seven Stars Gold Mining Company." This doubtless refers to the account of the Seven Stars Company on the books of the Industrial Company and the procedure was doubtless resorted to by the latter Company for the purpose of keeping account of the moneys advanced to the Seven Stars Company on account of the enterprise, for Finding 48 makes it very clear just how the remittances were made by it to the Bank of Arizona and how they were credited on the books of that Bank. After the recitation in Finding 47 of all remittances made for payments under the Cowland contract, Finding 48 uses this language :

"48. That the payments of November 12 and December 9, 1892, and in February 11 and June 5, 1893, were made in the following manner, to-wit: The treasurer of the Industrial and Mining Guaranty Company drew a check for each payment on its common fund in the Continental National Bank of New York, which said checks were payable as follows, to-wit: 'To the order of Charles Cowland or Laidlaw & Company' (or, 'to the order of Charles Cowland or the Park National Bank,' as the case was;) 'for telegraphic transfer, to the Bank of California,' (or 'the Bank of Arizona' as the case was) 'for credit to Lawler and Wells on account

of the Cowland contract,' which said checks were collected by the payee and the moneys received therefrom, transmitted in the usual course of business to the Bank of Arizona and there placed to the credit of Lawler and Wells on account of the purchase price of said property, in accordance with the terms of the original escrow agreement, 'Exhibit A,' and the amendments thereof."

The remittances referred to in Finding 48 cover the entire amount remitted except the sum of $9,000, one-half of which was paid on June 3rd and the other half on August 4th, 1893. Nor will Finding 26 which is in the following language, "On May 20, 1893, Lawler received notice in writing that remittances on account of the Cowland contract were being made from money derived from the sale of the stock of the Seven Stars Gold Mining Company," modify the effect of the direct and specific findings of what the facts were. This cannot be construed to mean any more than the plain language conveys. It does not find as a fact that remittances on account of the Cowland contract *were* made from money derived from the sale of the stock of the Seven Stars Gold Mining Company at any time during the past, nor that they were then, namely, May 20th, in process of transmission, nor that they were to be made from that fund in the future. No remittances of any kind had been made for one hundred days prior to May 20th, 1893. None at that time were being transmitted. None were made after May 20th except the three payments of June 3rd, June 5th and August 4th, 1893, aggregating $11,200. There is not a syllable in the entire record to indicate that a dollar was received from these American stock subscriptions after May 15th, 1893, and the only finding of fact in respect to that matter is, "That after the 11th day of May, 1893, the Industrial and Mining Guaranty Company received the sum of $500 and no more, on account of the sale of Seven Stars stock." (Finding 53).

If a person should hear that his intimate friend had fallen dead at a certain time and place he might make the statement of what he had heard with absolute verity. Indeed, to come a little closer to the record before us, he might receive notice in writing that his friend fell dead at a certain time and place, and a court might find as a fact that on a certain day he did receive notice in writing that such was the fact; and it might be true also that subsequent to that date while walking along the street he met his friend face to

face and with surprise congratulated him that the notice received was unfounded in fact. All doubt as to the meaning of the court's finding taken as a whole with respect to the matter under consideration will be dissolved by a reference to finding number 50, which is as follows:

"That the defendants, John Lawler and Ed. W. Wells, did not at any time, prior to the time of the commencement of this action, have any knowledge or notice that any moneys received by them on account of the purchase price of the Hillside group of mines, as provided for in the original escrow agreement of May 12, 1892, came from or was the moneys or any part of the moneys which any one or more of the purchasers of the stock of the Seven Stars Gold Mining Company had paid in to the Industrial and Mining Guaranty Company on account of the purchase price of such stock."

Upon this record we submit that the argument submitted by appellants in their reply brief is founded upon a false premise when it asserts:

"The basic proposition upon which counsel rest the defense of Lawler and Wells is that the findings do not affirmatively show they knew the moneys of appellants received by them had been obtained by false representations."

If our position has not been made clear by the printed brief and argument submitted to this court, we will still be contented with the thought that the court will take the record and the findings of fact as they are written and decide the case according to the rights of the parties as determined by those facts, uninfluenced by the subtly pregnant and erroneous statement of our position by our opponents.

The contention of counsel for appellants upon this proposition is not sustained by the authorities. The case of Holly vs. Domestic and F. M. S., 180 U. S., 284, is somewhat similar, at least, as to the principles involved, to the case at bar. The attitude of the petitioner therein corresponded in a measure to that of the appellants here. His rights are disposed of in the opinion of the court by Mr. Justice Shiras in this language:

"Let it be conceded that he was not, in the circumstances, estopped from following his money into the hands of the missionary

society, by having entered an attachment against Thompson for a frauduient conversion of his money; let it also be conceded that, by trusting his money with Thompson, who had theretofore been his attorney, and whose standing in the community was good, he was not guilty of conduct so reckless and negligent as to, of itself, deprive him of a remedy; yet his case fails in the essential particular that he has not shown that the missionary society, in receiving from Thompson, executor, the money due from the estate of Rev. Dr. Saul, and in applying it in accordance with the appointments in the will, acted with any notice or knowledge, actual or imputable, that Thompson was misapplying funds intrusted to him by a third person with whom the society had no relations whatever. As against the missionary society, Holly, in the circumstances disclosed, has no equities; and even if it could be said that the equities were equal, a court of equity will not transfer a loss that has already fallen upon one innocent party to another party equally innocent."

A mine in litigation, impressed with an alleged lien, clouded by a *lis pendens*, is avoided alike by the operator and the buyer as a leper is avoided by his unafflicted brethren. As merchantable property it is as ineffectual and unattractive as though from its cavernous mouth there continuously issued the monotonous sound, "Unclean, unclean."

We submit that under the principles of good conscience and established equitable jurisprudence, the defendants, Lawler and Wells, are innocent of any wrong; that their loss by reason of this entire transaction—the surrender of the occupation and control of the mines, their use or abuse by others, the clouded title—is irreparable; and this attack upon this property made and persisted in through more than a decade in the behalf and in the manner disclosed by this record betrays on the part of the complainants an atrophy of the sense of property rights.

Respectfully submitted,

H. C. McDougal,
W. C. Scarritt.

E. L. Scarritt,
*Of Counsel.*

# Supreme Court of the United States.

No. 174.—October Term, 1902.

Clinton B. Wiser et al., Appellants, vs. John Lawler et al. } Appeal from the Supreme Court of the Territory of Arizona.

[April 27, 1903.]

This was a complaint in the nature of a bill in equity filed in the District Court of Yavapai County, Arizona, by appellants, for themselves and all others interested, against John Lawler and Edward W. Wells, principal defendants, and the Seven Stars Gold Mining Company, The Industrial Mining and Guaranty Company and John Griffin, receiver of such companies, to adjudge Lawler and Wells to be estopped from disputing the title of the Seven Stars Company to certain mining properties, and to decree such properties to belong to that company, and for an account of the proceeds of all ore taken from the mines and received by defendants Lawler and Wells, or, in the alternative, for a money decree against them for the aggregate amount paid by plaintiffs and others for stock in the company, upon the representations contained in certain prospectuses and maps, by which the plaintiffs were induced to purchase stock in such company, and for a confirmation of the title to the property in such defendants.

The cause came on for hearing upon the pleadings, and at first resulted in an interlocutory decree in favor of the plaintiffs, with an order for an accounting by defendants. The case was then referred to a master to report the number of shares in the Seven Stars Company subscribed and paid for, and to ascertain the amount paid to defendants Lawler and Wells on account of the purchase price of the property. This was finally fixed at the sum of $180,139.82, which was held to be a lien, and the property was ordered sold in satisfaction thereof. A new trial was subsequently granted, upon the hearing of which, upon pleadings and evidence, it was held that plaintiffs were entitled to no relief, and the complaint was dismissed, and an appeal taken to the Supreme Court of Arizona, which affirmed the decree of dismissal. (62 Pac. Rep. 695.)

The Supreme Court made a finding of facts in sixty-four paragraphs, which is quite too long to be reproduced here, but which may be summarized as follows:

In May, 1892, the defendants Lawler and Wells were the owners of the legal title to a collection of mines known as the "Hillside Group," the

muniments of such title being of record in the county recorder's office of Yavapai County.

Lawler and Wells offered these mines for sale at $450,000 cash, and on May 12 one Warner visited the mines and contracted for their purchase for $450,000, paying $20,000 in cash, the remainder to be paid in installments in accordance with the terms of an escrow agreement entered into between Lawler and Wells and one Cowland. This agreement provided, among other things, that a deed conveying the mines to Cowland be held in escrow by the Bank of Arizona and be delivered upon paying the full sum of $450,000; and that upon the failure of the payments the deed should be redelivered to Lawler and Wells and all payments be forfeited. Cowland agreed that all moneys paid by him should belong to Lawler and Wells and should be retained by them as liquidated damages accruing from the failure to pay for the property, and Lawler and Wells be released from any obligation to convey the property. It was further agreed that Cowland might take possession of the property, develop and operate it, the proceeds to be paid to the vendors and credited upon the purchase price; that Lawler and Wells should, nevertheless, remain in legal possession of the property until full payment, but should not work it or interfere with its operation by Cowland. It was further agreed that, should Cowland fail to make any payments, all improvements on the property and ore taken therefrom should be the property of Lawler and Wells. A deed of the property was executed to Cowland and placed in escrow as above stated. Warner was the real party in interest and Cowland only his agent.

On June 14, Warner and Cowland, with some others, incorporated the Industrial Mining and Guaranty Company for the purpose of handling mines and buying and selling stock, to which company Cowland delivered a written assignment of all his interest in the escrow agreement, as well as a deed of the mining properties with a covenant of warranty against incumbrances. The new company assumed all the covenants of Cowland in the escrow agreement, to make the payments therein stipulated, and to procure the escrow deed then in the hands of the Bank of Arizona. Possession of the properties was delivered to the new company with full knowledge on its part of the terms of the escrow agreement. The company remained in possession until October 1, 1892.

On August 15, 1892, Warner and several others incorporated the Seven Stars Gold Mining Company under the laws of New Jersey, of which certain persons, including one of the plaintiffs, were elected directors. About the same time the Guaranty Company offered to sell and convey all its interests in certain mining properties, including a part of those described in the escrow agreement, to the Seven Stars Company, upon receiving $2,800,000 in cash or stock of such company. On October 1 the Guaranty Company placed the Seven Stars Company in possession

of the Hillside Group, with full knowledge on the part of the latter of the terms of the escrow agreement.

The Guaranty Company, as the agent of the Seven Stars Company, issued in September, 1892, a prospectus, known as the American prospectus, to promote the sale of the stock of the Seven Stars Company, 300,000 of which prospectuses, accompanied by a map and an application for subscription to stock, were circulated throughout the United States. In October, 1892, the Guaranty Company directed the issuing of an English prospectus, which was never circulated, but another, issued without the authority of the Guaranty Company or the Seven Stars Company, was prepared, supervised and circulated by Cowland. The descriptive matter in this prospectus was obtained from data furnished by the officers of the Guaranty Company. The circulation of this prospectus amounted to 80,000 copies, and accompanying each copy was a map and application for subscription to stock; but neither Lawler nor Wells had any knowledge or information that this prospectus had been or was being circulated in England, or had any knowledge of its contents until some time in October, 1893. The further material facts are set forth in the opinion.

Mr. Justice BROWN delivered the opinion of the Court.

The principal defendants to this suit are Lawler and Wells, (hereinafter termed "the defendants") and the case turns upon their complicity in and responsibility for the contents of the prospectuses, which are full of exaggerated and delusive statements, and were undoubtedly a gross fraud upon persons who took stock upon the faith of their exuberant promises. Indeed, they were of such a character as to create surprise that intelligent investors should have believed their statements to be true. The representation upon which the greatest reliance is placed is that contained in the American prospectus; that "the titles are unquestionable, to the Seven Stars, Hillside, Happy Jack and other mines, being held under United States patents;" and in the English prospectus, that "the mines *owned by the company* are situated in the Eureka mining district, Yavapai County, Arizona," and that "the title is indefeasible, being United States patents to five claims, together with several locations as easements"

Attached to these prospectuses was a map entitled "Map of the group of mines belonging to the Seven Stars Gold Mining Company." It is true that there is neither in the prospectuses nor in the map a distinct assertion that the legal title to the properties mentioned was vested in the Seven Stars Company; but we think that no one can read them without inferring and believing that the Seven Stars was the owner of these properties, and that the net proceeds of their operation would be distributed in dividends to stockholders. As they were circulated as an inducement to take stock in the enterprises, we are bound to interpret them by the effect they would

produce upon an ordinary mind. *Andrews* v. *Mackford*, (1896) 1 Q. B. 372. They were, however, even more damaging in their omissions than in their statements. No mention was made of the fact that the title to these properties stood in the names of Lawler and Wells; no allusion to the Cowland agreement, with its provisions for forfeiture, nor to the fact that the only interest of the company was an equitable right to the properties after the sum of $450,000 had been realized from the profits and paid to defendants. In estimating the probability of subscribers being misled by these prospectuses we may take into consideration not only the facts stated, but the facts suppressed. (*New Brunswick &c. Co.* v. *Muggeridge*, 1 Drewry & Smale, 363.) They are entitled to know the *cons* as well as the *pros*. *Gluckstein* v. *Barnes*, (1900) A. C. 240; *Hubbard* v. *Weare*, 79 Iowa, 678; *Hayward* v. *Leeson*, 176 Mass. 310; *In re Leeds and Hanley Theatres*, (1902) 2 Ch. Div. 809.

It does not appear, however, that these defendants were promoters or interested in the organization of the Guaranty Company, or the Seven Stars Company, or in the sale of the capital stock of such companies, although they knew that Warner's intention was to incorporate a company, and, to use the language of one of the defendants, "work it for all there was in it." As they were not concerned in the methods used to procure subscriptions to stock, or in the statements made in the prospectuses, it is difficult to see how they can be held responsible, unless they are made so by the fact that they knew and connived in the misstatements as to the title of the company. But while they might have known that the prospectuses were being issued, they were under no obligation to read them or contradict their exaggerated statements and promises. In their agreement with Cowland they had stipulated that he, or his assignee, should explore, work and operate the property, and they could not have failed to know that this would be done through a company organized for that purpose. Such company would be authorized to issue prospectuses and obtain subscriptions to stock as best it could, and clearly defendants were not bound to supervise its methods in doing so, or render themselves responsible for statements made by the company, provided they did not indorse them. There were no relations between them and the purchasers of the capital stock, and no duty on their part to interfere with the circulation and distribution of the prospectuses and maps, or to inform the subscribers personally that they were the owners of the legal title to the property. They had the right to rely, so far as respected these companies and their stockholders, upon the fact that their title was of record, and was notice of their rights to every one who contemplated taking stock in the company.

The testimony bearing upon the complicity of Lawler and Wells with the preparation of these prospectuses and maps is such as amounts rather to

a suspicion that they may have known and approved of their contents, than to positive proof that they received their indorsement. Of course, if it were shown that they were put forth by them personally with knowledge upon their part of their contents, and of the falsity of their statements, and that they were issued as a basis of obtaining subscriptions to stock, they would be justly held liable as participants in the fraud; but the mere fact that they turned over the organization of the company to other parties who would pursue the usual course of issuing prospectuses for the purpose of raising subscriptions, would not, of itself, charge them with the duty of examining and verifying their statements.

The facts principally relied upon are that the defendants caused to be delivered to Mr. Rickard, an agent of Cowland, a report previously made upon the mines, known as the Blauvelt report, together with a map of the underground workings of the mines, known as the Blauvelt map, as well as copies of the smelter and milling returns of ores shipped from the mines, known as the "smelters' returns." It is not found, however, that these documents were false in any particular, except the map, which was prepared by one Brodie, without the knowledge of the defendants, but was seen by defendant Lawler hanging in the office of the companies in New York, and was entitled "Plat of the Hillside and adjoining claims," although it appears that afterwards, without the knowledge of Lawler, these entitling words were changed, before the maps were distributed, to the words "Map of group of mines belonging to the Seven Stars Gold Mining Company." It thus appears that when Lawler saw this map it contained no words indicative of ownership in the Seven Stars Company. It also appeared that in August of the same year defendant Wells visited the office of the Guaranty Company in New York, and while there had an interview with Warner, president of both companies; but the evidence does not show that anything was said to Wells about the plans of the companies, or the issue and circulation of a prospectus; although Lawler became aware of the fact that the prospectus was being prepared for circulation, and for the purpose of promoting the sale of the stock of the company, and that the Blauvelt report and map were being used in connection with it.

In October, 1892, Warner represented to the defendants that he was unable to place the securities he held, in time to meet the payment of that portion of the price falling due November 12, and relying upon his representations and requests defendants agreed to an extension of the time; but on May 8, 1893, the whole scheme so far as Warner was connected with it, collapsed, by his executing a general assignment of his property for the benefit of his creditors. Defendants, learning of this, made a further agreement with Cowland, extending the time for payment under his agreement, receiving as part of the consideration $50,000 par value of the guaranteed

capital stock of the Seven Stars Company, and the appointment of Lawler as manager of the mines. In May, 1893, Lawler received notice in writing that remittances on account of the Cowland contract were being made from money derived from the sale of stock of the Seven Stars Company, and in August, 1893, the Chancery Court of New Jersey, in which State the company was incorporated, appointed defendant Griffin receiver of both companies. In September, defendants, as owners of the legal title, and exercising their rights under the original escrow agreement, entered into possession of the group of mines and remained in exclusive possession until September, 1897, when a receiver was appointed by an Arizona court.

The most important item of testimony, and one which lies at the basis of this suit, is the fact that the defendants received from the proceeds of the mines, during their operation by the Seven Stars Company, sums aggregating $47,812.25, and also received from Warner and others, on account of the purchase price of the property, $112, 339.96. This, however, they had a perfect right to do under their contract, unless they were distinctly apprised of the fact that it was fraudulently procured. But the prospectus, map and application were prepared under the supervision of Warner, and the documents framed in accordance with his views. The evidence tends to show that while defendants had knowledge of the preparation and circulation of the prospectus and maps, knowledge of the statements and representations contained in them is not brought home to them, nor were they bound to inform themselves as to their contents.

There are further findings that defendants, in October, 1892, became aware that the American prospectus was being distributed by the Guaranty Company, and that they did not at any time protest against its preparation or circulation, or in any way give notice of their rights in the mines to any of the purchasers of the stock of the Seven Stars Company, except as such notice might be imputed to them through the record title in defendants. But it is further found that they did not at the time the subscriptions to the stock were being made, make any representations or communications to any subscriber to said stock; nor did they have any notice or knowledge that any moneys received by them on account of the purchase price formed a part of the money raised from subscriptions to stock and paid to the Guaranty Company on account of the purchase price—at least not until May 20, 1893, when nearly all the payments had been made. Neither were they interested as promoters or otherwise in the organization of either of the corporations, or in the issue or circulation of the prospectuses, or the sale of the capital stock.

Were they bound to refuse the money when it was tendered them? Even if defendants had knowledge or notice that payments received by them on account of the purchase price were made from moneys raised from subscriptions to stock, there was no impropriety in receiving their money

from the proceeds of the sales of the stock, although the contract specified only that they should be entitled to the proceeds of the ore mined. As they had agreed to sell their interests at $450,000, and Cowland had agreed to pay that amount, it may be assumed that this was the real value of the properties at that time. This amount defendants had a right to receive before they surrendered the deed of the properties, but how it was to be raised was no concern of theirs. Granting the provision in the contract for the forfeiture of all moneys paid, in case the sale finally fell through, to have been a harsh one, (and in fact it was much less harsh than it appeared to be,) it was fully understood and agreed upon by both parties; and while a bill in equity might not have lain to enforce it, it does not follow that defendants will be compelled to return the money unless they actively participated in the representations under which it was raised. The case would have been stronger if the Cowland agreement had provided distinctly that a mining company should be formed and defendants paid from the proceeds of sales of its stock, but the agreement made no provision how the money should be raised or from what fund it should be paid, except that the proceeds of the operation of the mines and the ores should be at once paid to the defendants and be credited on the agreement. It was not provided, however, that this should be the only source from which the money should be raised.

As matter of fact, the Guaranty Company was engaged in promoting sundry mining and industrial enterprises, including the business of the Seven Stars Company; and during the time the payments were being made, it received and disbursed the sum of $824,142.13, which was deposited in its own name in a common fund in the Continental National Bank, and chequed out by the Guaranty Company in its various business enterprises as required, and, amongst others, to the defendants on account of the Cowland agreement. These cheques, which were generally payable to Cowland, were collected by the payee, the money transmitted to the Bank of Arizona, and placed to the credit of defendants on account of the purchase price of the property. Between June 15, 1892, and September 18, 1893, the Guaranty Company paid out for operating expenses, purchase of machinery, purchase price of the Hillside group of mines, dividends and all other expenses, an aggregate sum of $380,295.81—over $100,000 more than the amount of money received from the sale of the Seven Stars guaranteed stock.

The case, then, comes to this: Whether the mere fact that defendants knew that a prospectus was to be issued; that they furnished the Blauvelt report, (not shown to be false,) to which was appended a map indicating (though not to their knowledge) that the mines belonged to the Seven Stars Company, and that they might have informed themselves, if they had chosen to do so, of the contents of the prospectus, and did actually

receive a large amount of money without knowing the source from which it came, render them liable as participants in the fraud perpetrated by the circulation of the prospectus?

Putting the case in the most favorable light for the plaintiffs, it was only a case of estoppel by silence. Indeed, it was not eveu an ordinary case of estoppel by silence, but an estoppel by silence concerning facts of which defendants may have had no actual knowledge. To constitute an estoppel by silence there must be something more than an opportunity to speak. There must be an obligation. This principle applies with peculiar force where the persons to whom notice should be given are unknown. So, too, to constitute an estoppel, either by express representation or by silence, there must not only be a duty to speak, but the purchase must have been made in reliance upon the conduct of the party sought to be estopped; and the express finding of the court in this case is "that the subscribers to the capital stock of the Seven Stars Company, in making their several subscriptions therefor and payments thereon, did so without any knowledge of, and without relying on, anything said or done, or omitted to be said or done, in the premises by the said Lawler and Wells, or either of them." Granting that if these subscribers had known all the defendants knew regarding the title to this property, they would not have subscribed to the stock of the company, it does not follow that defendants were bound to take active steps to inform the public of that which already appeared upon the record.

This case does not belong to that class of which *Gregg* v. *Von Phul*, (1 Wall. 274,) is an example, wherein it was said that "if one has a claim against an estate and does not disclose it, but stands by and suffers the estate to be sold and improved, with knowledge that the title has been mistaken, he will not be allowed afterwards to assert his claim against the purchaser." Such cases are believed to be confined to those where the party's silence is inconsistent with the position subsequently assumed by him, as where he suffers land to be improved while holding an unrecorded deed of it. In this case, however, defendants' position was perfectly consistent with their title of record and with the Cowland agreement, which distinctly provided that Cowland or his assignees should enter into possession, develop and work the mines upon their own account, though paying the proceeds to them.

But, conceding defendants to have been apprised of the contents of the prospectus, it would certainly be an exceptional case if a person holding a deed of property which he has placed upon record would be bound to disclose his title to a person contemplating purchasing or making improvements upon the land, or would be estopped from making his claim thereto by mere silence, since he has a right to rely upon the constructive notice given by the record; although the rule would be otherwise in case of positive misrepresentations upon his part. (*Brant* v. *Virginia Coal & Iron Co.*,

93 U. S. 326, 337; *Knouff* v. *Thompson*, 16 Pa. St. 357; *Brinckerhoff* v. *Lansing*, 4 Johns. Ch. 65; *Rice* v. *Dewey*, 54 Barb. 455; *Kingman* v. *Graham*, 51 Wis. 232; *Sulphine* v. *Dunbar*, 55 Miss. 255; *Porter* v. *Wheeler*, 105 Ala. 451.) The authorities also recognize a distinction between mere silence and a deceptive silence accompanied by an intention to defraud, which amounts to a positive beguilement. (*Sumner* v. *Seaton*, 47 N. J. Eq. 103; *Hill* v. *Epley*, 31 Penn. St. 331; *Markham* v. *O'Connor*, 52 Geo. 183.)

For instance, if a mortgagee stood by while a mortgagor was selling a piece of property to a person whom the mortgagee knew was purchasing the property upon the supposition that it was unencumbered, he might be estopped by his silence, even though his mortgage were of record. But upon the other hand, if he were merely informed that the mortgagor was endeavoring to sell the property as unencumbered, he would clearly be under no obligation to look up the purchaser, or to inform the public generally of the existence of the mortgage. In such case he might safely rely upon the record. No duty to speak arises from the mere fact that a man is aware that another may take an action prejudicial to himself if the real facts are not disclosed. (*Sullivan* v. *Davis*, 29 Kan. 28.) As stated by Bigelow on Estoppel, 5th ed. page 596: "So long as he is not brought in contact with the person about to act, and does not know who that person may be, he is under no obligation to seek him out, or to stop the transaction, which is not due to his own conduct as the natural and obvious result of it." It cannot be that A would be estopped by silence with respect to his title to property which B is about to purchase, when he has no knowledge that B contemplates buying and B has no knowledge that A is connected with the property. We know of no case holding that a man is estopped by silence as against the public, or any particular person with whom he has no fiduciary relation. It was said by the Court of Appeals of New York in *Viele* v. *Judson*, (82 N. Y. 32, 40,) of the cases holding a party to be estopped by his silence: "In all of them the silence operated as a fraud and actually itself misled. In all there was both the specific opportunity and apparent duty to speak. And, in all, the party maintaining silence knew that some one else was relying upon that silence, and either acting or about to act as he would not have done, had the truth been told. These elements are essential to create a duty to speak."

Before holding that defendants are liable by reason of their silence it ought to be made to appear what action they could have taken to prevent the perpetration of the fraud embodied in the prospectus and maps. If they had actually participated in it by circulating these documents, or representing them to be true, the case would have been different; but if they be held at all it must be by reason of their silence and inaction, when it is not even shown that they were cognizant of the statements contained

in them. They may have seen them, but they were not bound to read them, or inform themselves of the truth of their statements, since they were no party to them in any way whatever, and were interested only in obtaining payment for their property. But conceding that they were fully apprised of their contents, what action were they bound to have taken? They could not give notice to the hundreds of thousands to whom the prospectuses were sent, since they were not even apprised of their names or addresses. A notice to the company not to send out these prospectuses would have been equally futile, in case the directors chose to disregard it, since they could not control their action, nor could they have sustained a bill for injunction, since they could have shown no personal injury to themselves by reason of the action of the promoters.

The difficulty of doing exact justice to the plaintiffs in this case, without also doing an injustice to the defendants, suggests another reason why they should not be charged with liability for the circulation of this prospectus and map without clear proof of their complicity. At the time of the sale of these mining properties their real value must have been unknown. If the mines proved successful they may have been worth millions; if unsuccessful, they would be of little value—perhaps worthless. The amount agreed upon, $450,000, was one which the defendants were willing to take as a compromise, and one which the plaintiffs were willing to pay as a speculation. Each party to the sale took his own chances, and no complaint is made of unfair dealing on either side. In their cross complaint defendants tendered to the court and offered to deliver the deed and possession of the mines upon the payment of the residue due them under the escrow agreement. If the property be now more valuable than the amount agreed to be paid, no reason is apparent why the tender should not have been accepted. If, as appears to be more probable, it is of less value, or wholly valueless, the defendants in refunding the amount paid would not only lose that amount, but all possibility of reselling the mines to other parties, and would thereby assume the risk of an unfortunate speculation, which the whole design of the sale was to impose upon the purchasers under the Cowland agreement, namely, the plaintiffs. In making the purchase the vendees were willing to assume the risk of the mines proving unsuccessful. The vendors were evidently unwilling to take this risk, and preferred to take a sum certain for their speculative chances. Assuming that in equity the defendants could be called upon to refund the money paid, it seems unjust that they should also be saddled with the burden of an unfortunate speculation. In short, the circumstances have so changed that justice cannot be done without imposing damages upon the defendants which were not within the contemplation of the parties.

If the first alternative prayer of the bill were granted, and it were adjudged that the defendants were estopped from asserting that the Seven

Stars Company was not the owner of the mining properties, and adjudging such company to have full title thereto, and that defendants should also repay all the proceeds of ore taken therefrom and received by them, amounting to $47,812.25, it will result that of the $450,000, agreed upon as the price of the property, they would have received but $112,339.96, and would lose $337,660.04, of the amount agreed to be paid. Upon the other hand, if the second alternative prayer were granted, and defendants were adjudged to return the money found due in the first decree of the District Court, namely, $180,139.82, and retake the property, which now appears to be of little value, they would be practically, in either case charged with the entire burden of the venture which it was the express object of the Cowland agreement to avoid. A decree that would bring about this result would savor of punishment to defendants rather than of compensation to plaintiff.

We think the plaintiffs have wholly failed to make out such a complicity on the part of the defendants, with the preparation and circulation of these prospectuses, as would make them liable for the losses which the plaintiffs have doubtless sustained.

The decree of the court below is, therefore, *Affirmed.*

True copy.

Test:

*Clerk Supreme Court, U. S.*